No. 212.

Filed Apr. 9, 1901.

Supreme Court of the United States.

No. 212. October Term, 1900.

CHARLES H. NUTTING, *Plaintiff in Error,*

v.

THE COMMONWEALTH OF MASSACHUSETTS.

In Error to the Superior Court of the Commonwealth of Massachusetts.

BRIEF FOR THE COMMONWEALTH.

HOSEA M. KNOWLTON,
Attorney-General.

ARTHUR W. DeGOOSH,
Assistant Attorney-General.

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CHARLES H. NUTTING, Plaintiff in Error,

v.

COMMONWEALTH OF MASSACHUSETTS.

BRIEF FOR THE COMMONWEALTH.

Statement of the Case.

The plaintiff in error was indicted in the Superior Court of Massachusetts in March, 1899. The indictment charged that the defendant "at Boston . . . did act in the negotiation and transaction of unlawful insurance with a foreign insurance company, not admitted to do business in said Commonwealth, by then and there for one William McKie, of said Boston, negotiating with and procuring to be issued by divers certain individuals as insurers a certain contract and policy of insurance against loss upon a certain vessel of said McKie there situate, the said individuals then being associated, organized and engaged as principals in the business of insurance under and by authority of the government of the United Kingdom of Great Britain and Ireland, and said individuals not being then and there admitted to do insurance business in said Commonwealth according to law."

To this indictment the plaintiff in error pleaded not guilty. At the trial before the jury the facts were agreed in writing. The agreement is set forth in the record in this case on pages 5 and 6. Upon these facts the court instructed the jury, against the plaintiff in error's exceptions, that they would be warranted in finding him

guilty, and so they returned their verdict. Exceptions were also taken to the refusal of the court to give certain rulings prayed for by the defendant. (Exhibit C, record, pp. 6, 7). These exceptions were argued before the Supreme Judicial Court of Massachusetts, and a rescript was handed down sustaining the verdict. The case is reported in the Massachusetts Reports, vol. 175, p. 154. The opinion of the chief justice is printed in the record, on pages 18, 19 and 20.

It appears by the agreed statement of facts (record, page 5) that the plaintiff in error was a licensed insurance broker in Boston, and was the agent of Johnson & Higgins, average adjusters and insurance brokers, whose principal office was in New York, that, *in the course of his business as agent for them*, he solicited from William McKie, a ship builder in Boston, the business of procuring insurance upon a vessel then in process of construction by McKie in his ship-yard in Boston, and secured the authority of McKie to the placing of the insurance upon the vessel. He then sent the order for the insurance to Johnson & Higgins in New York, and they, through their Liverpool agents, procured the policy from the London Lloyds, insuring the vessel in favor of themselves, and "on account of whom it may concern, as well as in their own as for and in the name and names of all and every other person or persons to whom the same doth, may or shall appertain."

At the time of receiving the policy, Johnson & Higgins, through their Liverpool agents, advanced the premiums and were paid the commission on the insurance by the London Lloyds. They sent the policy by mail to the plaintiff in error at Boston, and the plaintiff in error then sent it by mail to McKie. The policy was secured for McKie from the London Lloyds for compensation in the usual course of the business of Johnson & Higgins and of the defendant.

The London Lloyds are individual insurers, citizens of England, engaged as principals in the business of insurance under the authority of the laws of England. They had not complied with the laws of Massachusetts, and were not admitted to do business therein.

STATUTES OF MASSACHUSETTS.

The statute of Massachusetts under which these questions are raised is St. 1894, c. 522, being an act to amend and codify the statutes relating to insurance.

Section 78 provides in substance, among other things, that no foreign insurance company shall be admitted to do business in Massachusetts until it has appointed an attorney, upon whom process in any suit against it may be served, and an agreement that process so served shall be of the same force and validity as if served upon the company; and has appointed some resident of the Commonwealth as its agent, and has obtained from the Insurance Commissioner a certificate that it has complied with the laws of the Commonwealth and is authorized to make contracts of insurance.

Sections 79 and 31 provide that a foreign marine insurance company, before doing business in Massachusetts, must deposit at least $300,000 with the treasurer of Massachusetts or with the financial officer of some other State, in exclusive trust for the benefit and security of all the company's policy holders and creditors in the United States.

Section 3 is in part as follows: "It shall be unlawful for any company to make any contract of insurance upon or concerning any property or interests or lives in this Commonwealth, or with any resident thereof, or for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of such insurance, unless and except as authorized under the provisions of this act. . . . All contracts of insurance on property, lives or interests in this Commonwealth shall be deemed to be made therein."

Section 98 is as follows: "Any person who shall . . . act in any manner in the negotiation or transaction of unlawful insurance with a foreign insurance company not admitted to do business in this Commonwealth, or who as principal or agent shall violate any provision of this act in regard to the negotiation or effecting of contracts of insurance, shall be punished by a fine of not less than one hundred nor more than five hundred dollars for each offence."

Assignments of Error.

These are printed upon pages 15, 16 and 17 of the record.

The substantial contention of the plaintiff in error is that the statute upon which the plaintiff in error was convicted is unconstitutional, for the reason that it operates to deprive him of his liberty of action without due process of law, in that it interferes and restrains his right to make contracts and carry on business. Assignments 1, 4 and 5 further assert that the acts complained of were done without the State of Massachusetts, and are not, therefore, within the jurisdiction of the court.

Argument.

The form of the indictment, and the sufficiency of the evidence to support the material allegations of it, have been determined by the State court, and are not Federal questions.

Moore v. *Missouri*, 159 U. S. 673, 678.
Baldwin v. *Kansas*, 129 U. S. 52, 57.

The sole question before this court, therefore, is, whether the State has the right to prohibit persons from taking part *in the State*, by way of solicitation, negotiation or otherwise, in the making of a contract of insurance between a citizen of the State and a foreign insurance company, which has not been authorized to do business in the State.

The Commonwealth does not deem it of importance to discuss the question, so much dwelt upon by the plaintiff in error, whether the locus of the contract of insurance was within or without the State of Massachusetts. It is submitted, however, that a contract made with a resident of Massachusetts, relating to property in Massachusetts, and in which the inception and conclusion of the negotiation, and the delivery of the policy as well, took place in the State, is to be construed as made within the State.

But if the views of the Commonwealth as to the construction to be given to the particular statute upon which this indictment is founded, and of the principles upon which its constitutionality

should be upheld, are correct, it is of no consequence whether the contract of insurance be regarded upon the facts as having been entered into in London, New York or Boston.

For the same reasons, the Commonwealth does not discuss the question whether the statute (section 3, above quoted, providing that contracts of insurance upon property within the State are to be deemed to have been made in the State) is so repugnant to the Constitution of the United States as to render it void, further than to submit that it is a regulation designed to make effectual the general prohibition of insurance in the State by unauthorized foreign companies.

Furthermore, the Commonwealth does not deem it important to consider the question whether, on the facts agreed upon, the plaintiff in error is to be taken to have acted as the agent of the insured or of the insurer. What is agreed is, that he was a licensed insurance broker in Boston, and that in Boston, in the course of his business and acting *as agent for Johnson & Higgins of New York*, he solicited from William McKie the business of procuring insurance upon the vessel by a foreign company, and secured the authority of McKie to the placing of a contract for insurance upon said vessel by such foreign company. These and no other are the acts of the plaintiff in error complained of.

The statute under which the plaintiff in error was indicted does not pretend to prevent or make it criminal for a resident of Massachusetts to insure his property in whatever company he may desire. It only makes it a penal offence for an agent or broker to negotiate or in any manner aid in the transaction of insurance with a foreign insurance company not admitted to do business in Massachusetts. It is the doing of such acts which is in terms charged in the indictment.

This prohibition is plainly within the police power of the State Legislature. From the earliest times the States of the Union have regulated the insurance business. A contract of insurance is one in which, without due regulation, fraud and deception are easy, and the protection of the insured may become worthless. The consideration is paid in advance by the insured, and the contingent performance or

the contract by the insurer postponed to some date more or less remote. Whether it is insurance upon life or property, it is one of vital importance to the insured, and upon which he relies for the conduct of his affairs.

The business of insurance, therefore, so vitally touching the most important affairs of the citizen, has wisely been placed, in many States, including Massachusetts, under the direct supervision of officers appointed for that purpose, the whole purpose of such regulations being the protection of the insured.

Among other such regulations is one intended to prohibit foreign insurance companies from effecting insurance within the Commonwealth without being licensed to do business and complying with certain salutary conditions, among them being the appointment of an agent, who shall be empowered to receive service of process, so that a foreign company may be suable within the jurisdiction of the insured, and the making of a deposit with the State Treasurer, to secure policy holders. As an exercise of the police power, such regulations have frequently been upheld in this court as constitutional.

"There is no doubt of the power of the State to prohibit foreign insurance companies from doing business within its limits. The State can impose such conditions as it pleases upon the doing of any business by those companies within its borders, and unless the conditions be complied with the prohibition may be absolute."

Allgeyer v. *Louisiana*, 165 U. S. 578, 583.

See also, to the same effect —

Orient Ins. Co. v. *Daggs*, 172 U. S. 557.

N. Y. Life Ins. Co. v. *Cravens*, 178 U. S. 389.

The liberty of the citizen to make contracts of insurance outside the State, although he resides in the State, is not attempted to be abridged; but the liberty of an insurance agent to solicit insurance business for companies without the State is made a criminal offence. If this be an interference with the liberty of the citizen, it is only such interference as is justified in innumerable cases by State jurisdiction, in the exercise of its power to make wise and salutary laws for the

protection of its citizens. The liberty of action secured by the Fourteenth Amendment means only such liberty of action as is not inconsistent with salutary laws passed for the protection of citizens generally, and to which all persons alike are subject. Statutes prohibiting the sale of intoxicating liquors, regulating the practice of medicine, requiring examination and license before carrying on certain occupations like that of pharmacists and auctioneers, statutes forbidding the keeping or selling of dangerous substances like gun powder, excepting under certain restrictions, are common instances of laws universally in force, not intended to prohibit freedom of action by the citizen or abridging his rights, but only subjecting him to salutary regulations for the benefit of the community.

If a State has the right to prohibit the placing of insurance within its borders by foreign companies who do not care to comply with the conditions prescribed by the State for doing business therein, it also has the right to enact regulations whose object is to prevent the evasion or nullification of such laws by indirect methods and subterfuges.

The State of Massachusetts has the right to prohibit foreign companies from doing business in this State without a license; as a means of giving effect to such prohibition, it must have the right to prevent those who are not licensed to act as insurance brokers from soliciting such business; otherwise the law would be of no value, and the State would be powerless to prevent the very thing it has the right to prohibit.

In the words of Mr. Justice White, in *Hooper* v. *California:* "If the contention of the plaintiff in error were admitted, the established authority of the State to prevent a foreign corporation from carrying on business within its limits, either absolutely or except upon certain conditions, would be destroyed. It would be only necessary for such a corporation to have an understanding with a resident that in the effecting of contracts between itself and other residents of the State he should be considered the agent of the insured persons, and not of the company. This would make the exercise of a substantial and valuable power by a State government depend not on the actual facts of the transactions over which it law-

fully seeks to extend its control, but upon the disposition of a corporation to resort to a mere subterfuge in order to evade obligations properly imposed upon it. Public policy forbids a construction of the law which leads to such a result, unless logically unavoidable."

Hooper v. *California*, 155 U. S., 648, 658.

The plaintiff in error will undoubtedly rely upon *Allgeyer* v. *Louisiana*, 165 U. S. 578. The case, however, is not in point. The statute of Louisiana upon which the proceeding in that case was begun undertook to prohibit citizens of the State of Louisiana from negotiating insurance with a foreign company. The facts show that the defendant, a citizen of Louisiana, made a contract in New York with a foreign company for insurance of his property within the State.

That case holds that the State has no right to prohibit its citizens from carrying on business beyond the borders of the State as he may please. This is the whole doctrine of *Allgeyer* v. *Louisiana*, and it has no application to the present case.

But it may be contended that, inasmuch as a citizen may go abroad for his insurance, he may also request another to make such a contract for him.

In the first place, however, the defendant did not act solely (if at all) as the agent of McKie. Whatever his relations with McKie may have been, the facts find that he was a duly licensed insurance broker, and was the agent of Johnson & Higgins, also insurance brokers, and what he did in the way of effecting the insurance in question he did *in the usual course of his business, as such*. To say that, in this case, he was merely acting as the agent of McKie, is not only a mere subterfuge, but is less than the whole truth, — that he was acting in his capacity of insurance broker.

Furthermore, this contention is effectually disposed of by a paragraph of the opinion in *Hooper* v. *California*, 155 U. S. 648, and quoted with italicised approval by Mr. Justice White in *Allgeyer* v *Louisiana*, 165 U. S. 578, 588, — a paragraph which seems to have had the only contention of the present plaintiff in error in view: "The Fourteenth Amendment, however, does not guarantee the citizen *the right to make within his State, either directly or indi-*

rectly, a contract, the making whereof is constitutionally forbidden by the State. The proposition that, because a citizen might make such a contract for himself beyond the confines of his State, therefore he might authorize an agent to violate in his behalf the laws of his State, within her own limits, involves a clear non sequitur, and ignores the vital distinction between acts done within and acts done beyond a State's jurisdiction."

The Commonwealth is unable to discover any substantial difference between the facts of this case and those in *Hooper* v. *California*, 155 U. S. 648. The language of the majority opinion is precisely in point, and, it is submitted, disposes of every contention of the plaintiff in error. The authority of the case has been recognized in every subsequent decision, particularly in *Allgeyer* v. *Louisiana*, *ubi supra*.

The contention that the broker is protected because the insurance was procured for the resident from a foreign company is disposed of in the opinion in these words (p. 657): "The admission that the insurance was procured for the resident from a foreign company, which had no agent in the State, does not exclude the possibility of its having been procured within the State. If it were obtained for the resident by a broker who was himself a resident, this would be a procuring within the State, and be covered by the statute. The business of a broker is to serve as a connecting link between the party who is to be insured and the party who is to do the insuring, — to bring about 'the meeting of their minds,' which is necessary to the consummation of the contract. In the discharge of his business he is the representative of both parties to a certain extent."

The distinction between this case and that of *Allgeyer* v. *Louisiana* is clear, and is plainly indicated in the opinion in that case.

It may further be contended by the plaintiff in error that the use of the word "unlawful," in the clause, "in the negotiation or transaction of unlawful insurance with a foreign insurance company," in section 98, and which is repeated in the indictment, takes the case out of the doctrine of *Hooper* v. *California*, for the reason that the insurance, having been effected in a foreign jurisdiction, was not unlawful insurance.

It is obvious, however, that the word "unlawful" as used in the

statute is to be taken to mean insurance prohibited by section 3, the material language of which is quoted above.

As is said by Chief Justice Holmes, in the case in the State court, "Whether the description of the insurance in the indictment as unlawful is to be rejected as surplusage, or whether the insurance be held to be unlawful within the meaning of the act and indictment because transacted through a broker acting unlawfully, an offence under the statute is set forth, and the defendant properly was convicted."

As to this matter, the determination of the State court is final, and cannot be reviewed in the Federal court.

HOSEA M. KNOWLTON,
Attorney-General of Massachusetts.

ARTHUR W. DEGOOSH,
Assistant Attorney-General.

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Commonwealth of Massachusetts.

LAWS

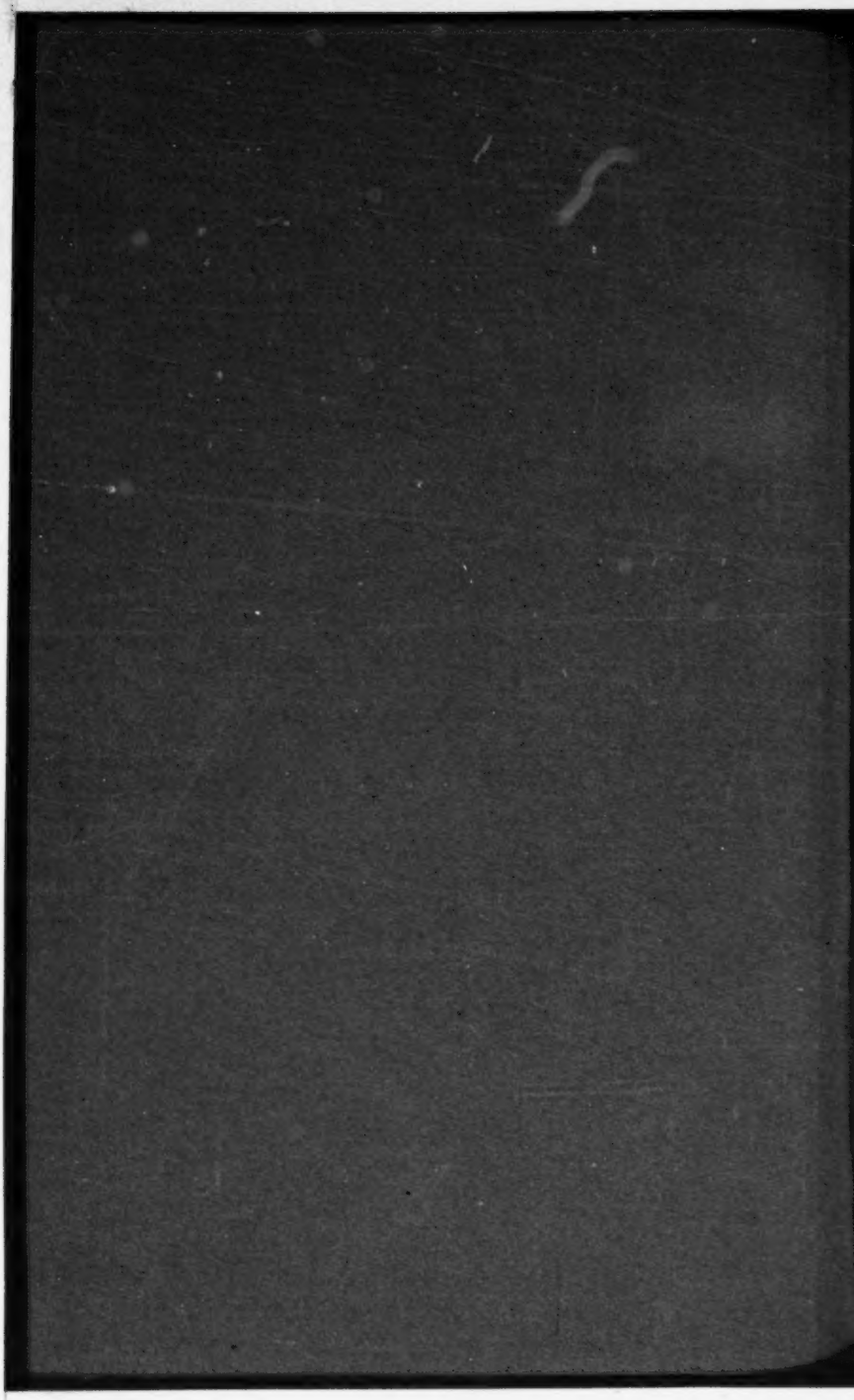
RELATING TO INSURANCE

AND

INSURANCE COMPANIES.

APRIL, 1900.

BOSTON:
WRIGHT & POTTER PRINTING CO., STATE PRINTERS,
18 POST OFFICE SQUARE.
1900.



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1900.

INSURANCE DEPARTMENT, BOSTON, April 1, 1900.

The laws herein contained apply to all kinds of insurance authorized to be transacted in the Commonwealth of Massachusetts except casualty insurance upon the assessment plan and the business of fraternal beneficiary organizations.

FRED'K L. CUTTING,
Insurance Commissioner.

Commonwealth of Massachusetts.

CHAPTER 522, ACTS OF 1894.

[As amended by subsequent acts.]

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. This act may be cited as the Massachusetts Insurance Act of eighteen hundred and ninety-four. When consistent with the context and not obviously used in a different sense the term "company", or "insurance company", as used herein, includes all corporations, associations, partnerships or individuals engaged as principals in the business of insurance; the word "domestic" designates those companies incorporated or formed in this Commonwealth, and the word "foreign", when used without limitation, includes all those formed by authority of any other state or government; the terms "unearned premiums", and "reinsurance reserve", and "net value of policies", or "premium reserve", severally intend the liability of an insurance company upon its insurance contracts, other than accrued claims, computed by rules of valuation established by section eleven; by the term "net assets" is meant the funds of an insurance company available for the payment of its obligations in Massachusetts, including, in the case of a mutual fire company, its deposit notes or other contingent funds, and, in the case of a mutual marine or mutual fire and marine company, its subscription fund and premium notes absolutely due, and also including uncollected and deferred premiums not more than three months due, on policies actually in force, after deducting from such funds all unpaid losses and claims, and claims for losses, and all other debts and liabilities inclusive of policy liability and exclusive of capital; the "profits" of a mutual insurance company are that portion of its cash funds not required for payment of losses and expenses nor set apart for any purpose allowed by law.

Short title of act.

Definition of words and phrases used in act.

SECTION 2. All insurance companies now or hereafter incorporated or formed by authority of any general or special law of

Companies subject to act.

Exceptions.

this Commonwealth, except corporations formed under or subject to chapter three hundred and sixty-seven of the acts of the year eighteen hundred and ninety-four and acts amendatory thereof, and except companies formed under or subject to chapter four hundred and twenty-one of the acts of the year eighteen hundred and ninety and acts amendatory thereof, may exercise the powers and shall be subject to the duties and liabilities provided by this act. And the general court may, for any cause it deems sufficient, annul or dissolve any such corporation or revoke its charter, and may amend or repeal the laws affecting the powers and obligations of such corporations.

General court may dissolve corporation or amend charter. P. S. 119, § 39.

Definition of insurance. 105 Mass. 149. 1897, c. 66.

SECTION 3. A contract of insurance is an agreement by which one party for a consideration promises to pay money or its equivalent or to do some act of value to the assured upon the destruction, loss or injury of something in which the other party has an interest, and it shall be unlawful for any company to make any contract of insurance upon or concerning any property or interests or lives in this Commonwealth, or with any resident thereof, or for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of such insurance, unless and except as authorized under the provisions of this act: *provided*, that corporations formed under chapter three hundred and sixty-seven of the acts of the year eighteen hundred and ninety-four and acts amendatory thereof may make provision for and pay benefits to their members and to the widows, orphans, relatives and other dependents of deceased members in the mode provided in said chapter; and *also provided*, that nothing herein shall affect the rights or powers of corporations engaged in the transaction of life and casualty insurance upon the assessment plan, under the authority of chapter four hundred and twenty-one of the acts of the year eighteen hundred and ninety, to transact the business authorized by said chapter. All contracts of insurance on property, lives or interests in this Commonwealth shall be deemed to be made therein.

Unlawful to negotiate or make contracts of insurance otherwise than as herein authorized.

Exceptions.

Contracts to be governed by Massachusetts laws.

DEPARTMENT AND COMMISSIONER OF INSURANCE.

Insurance commissioner. Appointment and tenure of office.

SECTION 4. The department of insurance shall remain as now established. Its chief officer, appointed by the governor with the advice and consent of the council, shall be styled the insurance commissioner for the Commonwealth, and shall hold

his office for the term of three years from the date of his commission and until his successor is appointed and qualified, unless sooner removed by the governor. He shall give bond with sureties in the sum of ten thousand dollars, to be approved by the treasurer of the Commonwealth, for the faithful discharge of his duties, and shall receive in full compensation for his services an annual salary of thirty-five hundred dollars.

Official bond.

Compensation. P. S. 119, § 2. 1890, c. 247.

POWERS AND DUTIES OF THE COMMISSIONER.

SECTION 5. The commissioner shall exercise the powers and perform the duties conferred and imposed upon him by this act or by any other law of the Commonwealth. He may with the approval of the governor and council appoint, and with their consent remove, a deputy commissioner to assist him in his duties, who shall receive an annual salary of twenty-five hundred dollars. In the event of a vacancy in the office of commissioner or during the absence or disability of that officer the deputy commissioner shall perform the duties of the office. The commissioner may also appoint, in the same manner in which under the provisions of law he may appoint a deputy commissioner, an examiner for the insurance department, at an annual salary of two thousand dollars. The commissioner may employ in his department an actuary with an annual salary of two thousand dollars, a chief clerk with an annual salary of two thousand dollars, a second clerk with an annual salary of fifteen hundred dollars, a third clerk with an annual salary of twelve hundred dollars, and such additional clerks and assistants as the public business in his charge may require, at an expense not to exceed such sum as the general court may appropriate each year.

Deputy commissioner, compensation. P. S. 119, § 3.

To act as commissioner in case of vacancy, etc. 1896, c. 335.

Actuary, 1895, c. 81.

Clerks and assistants. Their compensation. 1886, c. 137. 1888, c. 84.

QUALIFICATION AND EXAMINATION OF COMPANIES.

SECTION 6. Before granting certificates of authority to an insurance company to issue policies or make contracts of insurance he shall be satisfied, by such examination and evidence as he sees fit to make and require, that such company is otherwise duly qualified under the laws of the Commonwealth to transact business therein.

Commissioner shall examine companies as to their qualification under the laws.

As often as once in three years he shall personally or by his deputy, examiner, or chief clerk, visit each domestic insurance company, and thoroughly inspect and examine its affairs, especially as to its financial condition and ability to fulfil its

To visit and examine domestic companies every three years, or oftener if expedient, or upon request of

stockholders, etc. P. S. 119, § 6. 1883, c. 225. 1897, c. 67.

obligations and whether it has complied with the laws. He shall also make an examination of any such company whenever he deems it prudent to do so or upon the request of five or more of the stockholders, creditors, policy-holders or persons pecuniarily interested therein who shall make affidavit of their belief, with specifications of their reasons therefor, that such company is in an unsound condition.

To visit and examine foreign companies when he deems it expedient.

Whenever he deems it prudent for the protection of policyholders in this Commonwealth, he shall in like manner visit and examine or cause to be visited and examined by some competent person or persons he may appoint for that purpose any foreign insurance company applying for admission or already admitted to do business by agencies in this Commonwealth, and such company shall pay the proper charges incurred in such examination, including the expenses of the commissioner or his deputy and the expenses and compensation of his assistants employed therein.

Expenses of examination. P. S. 119, § 7.

His powers in examinations. P. S. 119, §§ 8, 9, 10.

For the purposes aforesaid the commissioner or his deputy or person making the examination shall have free access to all the books and papers of an insurance company that relate to its business, and to the books and papers kept by any of its agents, and may summon and qualify as witnesses under oath and examine, the directors, officers, agents and trustees of any such company and any other persons, in relation to its affairs, transactions and condition.

May summon and examine witnesses. Penalty. See § 108.

UNSOUND AND DELINQUENT COMPANIES.

If foreign company is unsound or in default, he shall revoke or suspend its authority to do business. P. S. 119, § 13.

If foreign company has failed to comply, commissioner shall revoke or suspend authority.

SECTION 7. If he is of opinion upon examination or other evidence that a foreign insurance company is in an unsound condition, or if a life insurance company, that its actual funds exclusive of its capital are less than its liabilities; or if a foreign insurance company has failed to comply with the law, or if it, its officers or agents refuse to submit to examination or to perform any legal obligation in relation thereto, he shall revoke or suspend all certificates of authority granted to it or its agents, and shall cause notifications thereof to be published in the newspaper in which the general laws are published, and no new business shall thereafter be done by it or its agents in this Commonwealth while such default or disability continues, nor until its authority to do business is restored by the commissioner: *provided*, *however*, that unless the ground for revocation or sus-

pension relates only to the financial condition or soundness of the company, or to a deficiency in its assets, he shall notify the company not less than ten days before revoking its authority to do business in this Commonwealth; and he shall specify in the notice the particulars of the supposed violation. The supreme judicial court upon petition of said company, brought within the ten days aforesaid, shall summarily hear and determine the question whether such violation has been committed, and shall make any proper order or decree therein and enforce the same by any appropriate process. If the order or decree is adverse to the petitioning company, an appeal therefrom may be taken to the full court; and in the case of such appeal the commissioner may issue his order revoking the right of said petitioning company to do business in this Commonwealth until the final determination of the question by the full court aforesaid. Neither this act nor any proceedings thereunder shall affect any criminal prosecution or proceeding for the enforcement of any fine, penalty or forfeiture.

Supreme court shall summarily hear and determine the question.

An appeal may be taken.

If, upon examination, he is of opinion that any domestic insurance company is insolvent, or has exceeded its powers, or has failed to comply with any provision of law, or that its condition is such as to render its further proceedings hazardous to the public or to its policy-holders, he shall apply to a justice of the supreme judicial court to issue an injunction restraining it in whole or in part from further proceeding with its business. Such justice may, in his discretion, issue the injunction forthwith, or upon notice and hearing thereon, and after a full hearing of the matter may dissolve or modify such injunction or make it perpetual, and may make all orders and decrees needful in the premises, and may appoint agents or receivers to take possession of the property and effects of the company and to settle its affairs subject to such rules and orders as the court may from time to time prescribe, according to the course of proceedings in equity.

Shall apply for injunction in case of insolvency, etc., of a domestic company. P. S. 119, §§ 14, 15.

Powers of court.

Section 8. Whenever it appears to him that the capital of a domestic insurance company is impaired to the extent of one fourth or more, on the basis fixed in section eleven, he shall notify the company that its capital is legally subject to be made good in the mode provided by section thirty-five, and if such company shall not within three months after such notice satisfy him that it has fully repaired its capital, or reduced its

Shall notify domestic company to make good its capital when impaired twenty-five per cent.

To apply for injunction if notice not complied with.

capital, as provided in section thirty-seven, he shall institute proceedings against it in accordance with the preceding section.

To notify domestic life company to cease business when its funds are deficient. See § 66. P. S. 119, § 155.

SECTION 9. When the actual funds of a domestic life insurance company, exclusive of its capital, are not of a net cash value equal to its liabilities, including the net value of its policies computed by the rule of valuation established by section eleven, he shall notify such company and its agents to issue no new policies until its funds become equal to its liabilities.

To report violations of law to attorney-general. P. S. 119, § 16.

SECTION 10. If upon examination or other evidence exhibited to him he is of opinion that any insurance company, or an officer or agent thereof, has violated any provision of this act, he shall report the facts to the attorney-general, who shall cause such company, officer or agent to be prosecuted therefor.

VALUATION OF LIFE POLICIES. REINSURANCE RESERVE. ASSETS.

To value policies of life companies annually. Rule of valuation. 1856, c. 252. 1861, c. 186. P. S. 119, §§ 17, 155, 159.

SECTION 11. He shall each year compute the net value on the thirty-first day of December of the preceding year of all outstanding policies of life insurance in companies authorized to make insurance on lives in this Commonwealth upon the basis of the "Combined Experience" or "Actuaries' Table" rate of mortality, with the interest at four per cent. per annum, and the aggregate net value so ascertained, of the policies of any such company shall be deemed its liability on account of its policy obligations, other than accrued claims, to provide for which it shall hold funds in secure investments of an amount equal to such net value above all its other liabilities. When the actual premium charged by a company for an insurance is less than the net premium for such insurance, computed according to the table of mortality and rate of interest aforesaid, then, and in every such case, the company shall be charged as a separate liability with the value of an annuity, the amount of which shall equal the difference between the premiums aforesaid, and the term of which in years shall equal the number of future annual payments due on said insurance at the date of the valuation.

Rule for computation of reserve for reinsurance, or policy liability. P. S. 119, § 11. 1883, c. 126. 1884, c. 178.

To determine the liability upon its contracts of insurance of an insurance company, other than life and real estate title insurance, and thence the amount such company shall hold as a reserve for reinsurance, he may take fifty per cent. or the actual unearned portion of the premiums written in its policies; but in respect to marine risks he shall compute the liability thereon by charging sixty per cent. of the amount of premiums written

in its policies upon yearly risks, and upon risks covering more than one passage not terminated, and the full amount of premiums written in policies upon all other marine risks not terminated: *provided*, that in the case of foreign fire and marine insurance companies with less than three hundred thousand dollars capital admitted to transact fire insurance only in this Commonwealth, the full amount of premiums written in their marine and inland navigation and transportation insurance policies shall be charged as liability.

Valuation of assets of life companies.

In valuing the assets which compose the legal reserve of a life insurance company the real estate, the bonds and stocks, shall be taken at such a value that the average annual income thereof shall be not less than four per cent. of the valuation; and if any asset or investment is conditioned upon a rate of interest of less than four per cent. annually, such asset or investment shall be rated at its value, considering the actual income and time it has to run, as the equivalent of a four per cent. investment; loans and credits shall not be allowed for more than their face value, nor shall any asset or investment be appraised for more than its market value.

What assets are admissible.

He shall allow to the credit of an insurance company in the account of its financial condition only such assets as are immediately available for the payment of losses in Massachusetts, but may credit any deposits or funds of the company set apart as security for a particular liability in set-off to the amount charged on account of such liability.

P. S. 119, § 64.

He shall not allow stockholders' obligations of any description as part of the assets or capital of any stock insurance company, unless the same are secured by competent collateral.

Shall examine and certify proceedings of companies to increase or reduce capital. See §§ 35, 36, 37.

SECTION 12. He shall, upon application, examine the proceedings of domestic companies to increase or reduce their capital stock, and when found conformable to law shall indorse certificates thereof, and shall issue certificates of authority to such companies to transact business upon such increased or reduced capital.

ACCOUNTS, ETC., OF RECEIVERS.

To audit the accounts of receivers of insolvent companies, and report to the court.

SECTION 13. He or his deputy or examiner shall annually, and oftener if there seems occasion, examine the accounts and transactions of all receivers of insolvent insurance companies, and shall also carefully examine all accounts of such receivers

referred to him under the provisions of section ninety-five, and make report thereof to the court.

May examine receivers and their books and papers.

For the above purposes he or his deputy or examiner shall have free access to the official books and papers of such receivers relative to their transactions, and may examine such receivers under oath as to all matters connected therewith.

Shall certify misconduct of receiver, and uselessness of proceedings to collect assessment. P. S. 119, §§ 170-172. 1896, c. 53.

Whenever in his opinion any receiver has violated his duty in office, or further proceedings by receivers to collect an assessment will not offer substantial relief to creditors, the commissioner shall certify the facts to the court having jurisdiction of the proceedings.

SUITS AGAINST FOREIGN COMPANIES.

To act as attorney for foreign companies for service of lawful process.

SECTION 14. When legal process is served upon him as attorney for a foreign company under the provisions of the third clause of section seventy-eight he shall forthwith notify the company of such service by letter prepaid and directed to its secretary, or in the case of a company of a foreign country to its resident manager, if any, in the United States; and shall within two days after such service forward in the same manner a copy of the process served on him to such secretary or manager, or to such other person as may have been previously designated by the company by written notice filed in the office of the commissioner. As a condition of valid and effectual service, and of the duty of the commissioner in the premises, the plaintiff in each such process shall pay to the commissioner at the time of service thereof the sum of two dollars, which the said plaintiff shall recover as taxable costs if he prevails in his suit. The commissioner shall keep a record of all such processes, which shall show the day and hour of service.

To give notice and keep record of processes. P. S. 119, §§ 202, 203.

FEES AND CHARGES.

Shall collect fees for valuing life policies, etc. 1894, c. 19.

SECTION 15. He shall collect and pay into the treasury charges and fees as follows: for valuation of life policies, two and one half mills for each thousand dollars of insurance; for each examination of a domestic company's qualification to transact business, thirty dollars; of each foreign company for filing copy of charter or deed of settlement, thirty dollars, and for filing statement with application for admission and for each annual statement, twenty dollars; for each license to procure fire insurance in unauthorized foreign companies, twenty dollars annually; for

each certificate to an insurance broker, ten dollars; for each certificate or renewal thereof to an insurance agent, two dollars; for each certificate of the valuation of the policies of any life insurance company and for each certificate of the examination, condition or qualification of an insurance company, two dollars; for each service of lawful process upon him as attorney, two dollars; for each copy of any paper on file in his office, twelve cents a page and one dollar for certifying the same; and all other fees and charges due and payable into the treasury for any official act or service of the commissioner.

BLANKS FOR STATEMENTS AND RETURNS.

SECTION 16. He shall in December of each year furnish to each of the insurance companies authorized to do business in the Commonwealth, two or more blanks in form adapted for their annual statements.

Shall furnish blanks for annual statements.

RECORD AND ANNUAL REPORT.

SECTION 17. He shall keep and preserve in a permanent form a record of his proceedings, including a concise statement of the result of official examination of insurance companies.

Shall keep a record of his transactions. P. S. 119, § 20.

He shall annually, and as early as consistent with full and accurate preparation, make a report to the general court of his official transactions, and shall include in such report a statement of the receipts and expenditures of his department for the preceding year; a report of the condition of the receiverships of insolvent companies; an exhibit of the financial condition and business transactions of the several insurance companies as disclosed by official examinations of the same or by their annual statements, abstracts of which statements, together with his valuation of life policies, shall appear therein; and such other information and comments in relation to insurance and the public interest therein, as he deems fit to communicate.

Shall make annual report to the legislature. P. S. 119, § 21.

[The insurance commissioner of the Commonwealth shall forthwith transmit to each register of probate and insolvency a list of all corporate surety companies qualified to do business in this Commonwealth so as to become sureties on bonds, and whenever new companies become qualified so to do business, or the right of qualified companies so to do business has ceased in this Commonwealth, the names of such companies shall

forthwith be transmitted by the insurance commissioner to said registers.] Chap. 54, Acts of 1898.

PROVISIONS COMMON TO ALL COMPANIES.

To do business and issue policies in corporate name. P. S. 119, § 178.

SECTION 18. Every insurance company, foreign or domestic, shall conduct its business in the Commonwealth in its own proper and corporate name, and the policies and contracts of insurance issued by it shall be headed or entitled only by its proper or corporate name.

Liabilities to be published with assets. P. S. 119, § 179. Penalty. See § 100.

When any such company publishes its assets it shall in the same connection and with equal conspicuousness publish its liabilities computed on the basis allowed for its annual statements, and any publication purporting to show its capital shall exhibit only the amount of such capital as has been actually paid in cash. Such publications shall be held to include all policies, renewals, signs, circulars, cards or other means by which public announcements are made.

Liable to taxation; to make returns for assessment of taxes. P. S. 119, § 45.

SECTION 19. Every such company shall be liable to taxation by any general law taxing insurance companies, and it shall by its proper officers make, to the tax commissioner or other officer of the Commonwealth, such returns and statements of its business and affairs as the law may require for the purpose of assessment of such taxes, and thereupon its officers and agents may be examined under oath by the officer to whom such returns are to be made.

Reinsurance shall be reported at time of filing annual statement. 1892, c. 47

SECTION 20. If any company authorized to transact the business of insurance in this Commonwealth shall directly or indirectly contract for or effect any reinsurance of any risk or part thereof taken by it, it shall make a sworn report thereof to the insurance commissioner at the time of filing its annual statement, or at such other time as he may request; and such reinsurance, except so far as it is in companies authorized to do business in this Commonwealth, shall not reduce the reserve required of it or the taxes to be paid by it, or increase the amount it is authorized to have at risk in any town or fire insurance district.

Reinsurance not to reduce reserve

Limit of single hazard. P. S. 119, §§ 56, 197. 1895, c. 59. Penalty. See § 103.

No insurance company shall insure in a single hazard a larger sum than one tenth of its net assets: *provided, however*, that a mutual boiler insurance company of this Commonwealth may insure in a single risk an amount not exceeding one fourth of its net assets.

[Consult chap. 537, Acts of 1898, relative to reinsurance contracts, page 69.]

Misrepresentation by assured not to avoid policy unless. P. S. 119, § 181. 1895, c. 271.

SECTION 21. No oral or written misrepresentation or warranty made in the negotiation of a contract or policy of insurance, by the assured or in his behalf, shall be deemed material or defeat or avoid the policy, or prevent its attaching, unless such misrepresentation or warranty is made with actual intent to deceive, or unless the matter misrepresented or made a warranty increased the risk of loss.

PROVISIONS SPECIAL TO MASSACHUSETTS COMPANIES.

Subject to general corporation law. P. S. 105, § 1.

SECTION 22. The general provisions of law relative to the powers, duties and liabilities of corporations shall apply to all incorporated domestic insurance companies, so far as such provisions are pertinent and not in conflict with other provisions of law relative to such companies or with their charters.

All insurance companies of this Commonwealth may be governed by this chapter, anything in their special charters to the contrary notwithstanding, providing notice of the acceptance of said act is filed with the insurance commissioner.

To continue bodies corporate after expiration of charter limitation.

SECTION 23. Domestic insurance companies incorporated by special acts, whose charters are subject to a limitation of time, shall after such limitation expires continue to be bodies corporate, subject to all general laws applicable to such companies.

To obtain certificate from commissioner before issuing policies. P. S. 119, § 5. 1897, c. 67.

SECTION 24. No domestic insurance company shall issue policies until upon examination by the commissioner, his deputy or examiner, it is found to have complied with the laws of the Commonwealth, nor until it has obtained from the commissioner a certificate setting forth that fact and authorizing it to issue policies. For such examination it shall pay into the treasury of the Commonwealth thirty dollars.

May adopt by-laws and divide directors into classes. P. S. 119, § 43. 1894, c. 74.

SECTION 25. Any such company may adopt by-laws for the conduct of its business not repugnant to law or to its charter, and therein may provide for the division of its board of directors into two, three or four classes, and the election thereof at its annual meetings in such manner as that the members of one class only shall retire and their successors be chosen each year. Vacancies in any such class may be filled by election by the board for the unexpired term.

Secretary and treasurer to give bond. P. S. 119, § 41.

The secretary and treasurer shall severally give bond with sureties in such sum as the directors may require for the faithful performance of their respective duties.

Call for meetings. P. S. 119, § 42.

All matters proposed to be acted upon at any meeting of the company shall be specified in the call for the same.

[No fire insurance company chartered under any law of this Commonwealth shall establish any agencies or appoint any agents or other persons to solicit or transact business for it in any state until said corporation has been lawfully authorized to transact business therein, nor shall any such corporation pay or allow any commission or emolument to any person whatsoever within any state to which it has not been lawfully admitted for the solicitation or procurement of insurance upon property therein.

For any violation of the preceding section the company shall be punished by a fine of not less than three hundred dollars.] Chap. 186, Acts of 1897.

Investments to be in corporate name.

All investments of the funds of the company shall be made in its corporate name, and no officer of the company and no member of a committee thereof charged with the duty of investing its funds shall borrow the same or be directly or indirectly liable for or on account of loans thereof to others; nor shall any director or other officer take or receive to his own use any fee, brokerage, commission, gift or other consideration for or on account of a loan made by or on behalf of such company.

Officers not to borrow, or to act as brokers of loans. P. S. 119, §§ 46, 47.

Policies to be signed, etc. P. S. 119, § 56.

All policies issued by such company shall be signed by its secretary or in his absence by a secretary *pro tempore*, and by its president or vice president, or in their absence by two directors.

Office for business; cards, etc., to specify location. P. S. 119, § 44.

Such companies shall have their office in the city or town specified in their charter; and when they establish agencies in other cities or towns, all signs, cards, pamphlets and advertisements exhibited or issued by them shall specify the city or town where the company they represent is located.

Shall not trade except, etc., nor engage in other business. P. S. 119, § 49.

They shall not deal or trade in buying or selling goods, wares or merchandise, except articles insured by them on which losses are claimed, and except in replacing, rebuilding or repairing insured property, as provided in their policies, nor engage in any business other than as specified in their charters and articles of association and expressly authorized by law.

May hold certain real estate and no other. P. S. 119, § 36.

Any such company may acquire and hold real estate for the convenient accommodation of its business at a cost not exceeding twenty-five per cent. of its cash assets, and not otherwise,

but may hold real estate acquired under the conditions of any mortgage owned by it, or by purchase or set-off on execution, upon judgment for debts due it in the course of its legitimate business.

Venue and limitations of suits. P. S. 119, § 43.

SECTION 26. No such company shall make any condition or stipulation in its insurance contracts concerning the court or jurisdiction wherein any suit thereon may be brought, nor shall limit the time within which such suit may be commenced, to less than two years after the cause of action accrues, and any such condition or stipulation shall be void.

Mortgages held by, how taken on execution. P. S. 119, § 48.

SECTION 27. Mortgages on real estate held by a domestic insurance company may be attached and taken and sold on execution, in the manner provided in chapter one hundred and eighteen of the Public Statutes in respect to mortgages held by banks, and the secretary of the company shall perform in reference thereto the same duties required of cashiers and clerks of banks.

Corporate powers to cease, when. P. S. 119, §§ 24, 37, 50.

SECTION 28. If any domestic insurance company shall not commence to issue policies within one year after the date of its act of incorporation or of its certificate of organization, or if after it has commenced to issue policies it shall cease for the period of one year to make new insurances, its corporate powers shall expire by their own limitation, and the supreme judicial court upon petition of the insurance commissioner or of any person interested may fix by decree the time within which it shall settle and close its concerns. A company incorporated by special act shall, within one year from the date thereof, file with the secretary of the Commonwealth a written notice of its organization under its charter, or the same shall be void.

Charters of Massachusetts life companies shall not limit investments. 1888, c. 165.

Nothing in the charter of any mutual life insurance company incorporated under the laws of the Commonwealth shall limit the investments of such company unless such limitation be contained in the general insurance laws which now are or which may hereafter be in force.

1895, c. 46. 1897, c. 64.

Every corporation heretofore or hereafter chartered under the laws of this Commonwealth to transact the business of insurance of any kind shall file with the insurance commissioner the name and residence of each person it appoints or employs to act as its agent in Massachusetts; and whoever shall assume to act as such agent, or, unless a licensed broker, shall in any manner for compensation aid in negotiating contracts of insurance on

behalf of such corporation for a person other than himself, prior to the filing of such notice of appointment, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to the penalties of section one hundred and ten of this act.

ORGANIZATION OF INSURANCE COMPANIES.

Purposes for which companies may be formed. P. S. 119, §§ 28, 30, 31. 1894, c. 296.

SECTION 29. Insurance companies may be formed as provided in section thirty for any one of the following purposes, to wit: —

Loss by fire, lightning and tempest on land.

First, To insure against loss or damage to property by fire, lightning, or tempest on land, upon the stock or mutual plan.

Marine insurance.

Second, To insure upon the stock or mutual plan, vessels, freights, goods, money, effects, and money lent on bottomry or respondentia, against the perils of the sea and other perils usually insured against by marine insurance, including risks of inland navigation and transportation.

Fidelity and corporate suretyship. See § 61.

Third, To guarantee the fidelity of persons in positions of trust, private or public, and to act as surety on official bonds and for the performance of other obligations.

Damage by steam-boiler explosions.

Fourth, To insure against loss or damage to property of the assured, or loss or damage to the life, person or property of another for which the assured is liable, caused by the explosion of steam-boilers.

Accident to persons. 1894, c. 133.

Fifth, To insure any person against bodily injury or death by accident, or any person, firm or corporation against loss or damage on account of the bodily injury or death by accident of any person for which loss or damage said person, firm or corporation is responsible.

Plate glass.

Sixth, To insure against the breakage of plate glass, local or in transit.

Sprinkler insurance. 1895, c. 474.

Seventh, To insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers and water pipes.

Vehicles, elevators. 1895, c. 474.

Eighth, To insure against loss or damage to property arising from accidents to elevators, bicycles and vehicles, except rolling stock of railways.

Credit insurance. 1896, c. 447.

Ninth, To carry on the business commonly known as credit insurance or guaranty, either by agreeing to purchase uncollectible debts, or otherwise to insure against loss or damage from the failure of persons indebted to the assured to meet their liabilities.

Tenth, [see sect. 62].

Sprinkler insurance by fire companies. 1896, c. 140.

All insurance companies authorized to transact fire insurance business in this Commonwealth may, in addition to the business which they are now authorized by law to do, insure sprinklers, pumps and other apparatus erected or put in position for the purpose of extinguishing fires, against damage, loss or injury resulting from accidental causes, other than fire; and may also insure any property which such companies are authorized to insure against loss or damage by fire, against damage, loss or injury by water or otherwise, resulting from the accidental breaking of or injury to such sprinklers, pumps or other apparatus, arising from causes other than fire. Contracts of insurance of the kind provided for in this paragraph shall not be incorporated in any contract of insurance against loss or damage by fire, but shall be contained in separate and distinct policies, the conditions of which shall be prescribed by the insurance commissioner for the Commonwealth.

Separate contracts. 1896, c. 140.

[All insurance companies authorized to transact fire insurance business in this Commonwealth may, in addition to the business which they are now authorized by law to do, insure property against loss by bombardment. Contracts of insurance of this kind shall not be incorporated in any contract of insurance against loss or damage by fire, but shall be contained in separate and distinct policies.] Chap. 380, Acts of 1898.

How organized. P. S. 119, §§ 26–28, 32–35.

Section 30. The procedure for organizing such a corporation shall be as follows: —

Corporators to subscribe articles of association.

The proposed corporators, who must be residents of the Commonwealth and not less than ten, shall subscribe articles of association setting forth their intention to form a corporation; its proposed name, which must not so closely resemble the name of an existing corporation as to be likely to mislead the public, and must be approved by the insurance commissioner; the class of insurance it proposes to transact and on what business plan or principle; the place, within the Commonwealth, of its location; and, if on the stock plan, the amount of its capital stock.

Contents of agreement of incorporation.

Corporate title.

The words "insurance company" must be a part of the title of any such corporation, and also the word "mutual" if it is organized upon the mutual principle.

First meeting for organization. How called and proceedings of.

The first meeting for the purpose of organization shall be called by a notice signed by one or more of the subscribers to the articles of association, stating the time, place and purpose of the meeting; a copy whereof shall, seven days at least be-

fore the appointed time, be given to each subscriber, or left at his usual place of business or residence, or duly mailed to his post-office address. And whoever gives such notice shall make affidavit thereof, which shall include a copy of the notice and be entered upon the records of the corporation.

Adoption of by-laws.

Election of officers.

At such first meeting, including any adjournment thereof, an organization shall be effected by the choice by ballot of a temporary clerk, who shall be sworn, by the adoption of by-laws, and by the election of directors and such other officers as the by-laws may require; but at such first meeting no person shall be elected director who has not signed the articles of association. The temporary clerk shall record the proceedings until and including the choice and qualification of the secretary.

The directors so chosen shall elect a president, secretary, and any other officers which under the by-laws they are authorized to choose.

Officers to make certificate to be approved by the insurance commissioner and filed with the secretary of the Commonwealth.

The president, secretary, and a majority of the directors, shall forthwith make, sign and swear to a certificate setting forth a copy of the articles of association, with the names of the subscribers thereto, the date of the first meeting and of any adjournments thereof, and shall submit such certificate and the records of the corporation to the insurance commissioner, who shall examine the same, and who may require such other evidence as he may judge necessary. The commissioner, if it appears that the requirements of the law as herein have been complied with, shall certify that fact, and his approval of the certificate, by indorsement thereon. Such certificate shall thereupon be filed by said officers in the office of the secretary of the Commonwealth, who, upon payment of a fee of twenty-five dollars, shall cause the certificate with the indorsement thereon to be recorded, and shall issue a certificate in the following form:

COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas [here the names of the subscribers to the articles of association shall be inserted] have associated themselves with the intention of forming a corporation under the name of [here the name of the corporation shall be inserted] for the purpose [here the purpose declared in the articles of association shall be inserted], with a capital [or with a permanent fund] of [here the amount of capital or permanent fund fixed in the articles of association shall be inserted], and have complied with the provisions of the statutes of this Commonwealth in such case made and provided, as appears from

the certificate of the president, secretary and directors of said corporation, duly approved by the insurance commissioner and recorded in this office: now, therefore, I [here the name of the secretary shall be inserted], secretary of the Commonwealth of Massachusetts, do hereby certify that said [here the names of the subscribers to the articles of association shall be inserted], their associates and successors, are legally organized and established as, and are hereby made an existing corporation under the name of [here the name of the corporation shall be inserted], with the powers, rights and privileges, and subject to the duties, liabilities and restrictions which by law appertain thereto. Witness my official signature hereunto subscribed, and the seal of the Commonwealth of Massachusetts hereunto affixed, this day of , in the year .
[In these blanks the day, month and year of execution of the certificate shall be inserted; and in the case of purely mutual companies, so much as relates to capital stock shall be omitted.]

Certificate of organization to have the force of a special charter, and be conclusive evidence of incorporation.

The secretary shall sign the same and cause the seal of the Commonwealth to be thereto affixed, and such certificate shall have the force and effect of a special charter and be conclusive evidence of the organization and establishment of such corporation. He shall also cause a record of such certificate to be made, and a certified copy of such record may be given in evidence with like effect as the original certificate.

Amount of Capital.

To do only the business specified in charter.

Minimum capital of stock companies. P. S. 119, § 29.

1895, c. 474. 1896, c. 447.

SECTION 31. No corporation so formed shall transact any other business than that specified in its charter and articles of association. Companies to insure plate glass may organize with a capital of not less than one hundred thousand dollars. Companies so formed insuring marine or inland risks upon the stock plan shall have a capital of not less than three hundred thousand dollars. Companies so formed for the transaction of fire insurance on the stock plan, of fidelity insurance, of accident insurance, of steam-boiler insurance, or for the transaction of the business authorized under the seventh, eighth or ninth paragraph of section twenty-nine of this act shall have a capital of not less than two hundred thousand dollars. Companies may be so formed to insure mechanics' tools and apparatus against loss by fire for an amount not exceeding two hundred and fifty dollars in a single risk, with a capital of not less than twenty-five thousand dollars, divided into shares of the par value of ten dollars each.

Employers' liability insurance. 1894, c. 133.

Mutual companies heretofore organized to transact employers' liability insurance may continue such business under the fifth paragraph of section twenty-nine of this act, and such companies shall be subject to the laws, so far as applicable, in relation to mutual fire insurance companies.

Deposits with state treasurer as capital.

No company shall be required to have on deposit with the treasurer of the Commonwealth an amount in excess of what is sufficient to enable it to comply with the laws of the states in which it transacts business; and all sums in excess of this amount held on deposit by the treasurer of the Commonwealth or elsewhere shall be counted as of the surplus funds of the company.

MASSACHUSETTS STOCK COMPANIES.

Officers, — their Election and Duties.

P. S. 119, §§ 51, 52, 53, 1854, c. 74. Election, eligibility and term of office of directors. 1906, c. 253.

Section 32. The board of directors of each domestic stock insurance company shall consist of not less than five members, chosen by ballot from stockholders a majority of whom shall be resident in this Commonwealth, who shall hold office for one year or for the term provided in its by-laws as authorized by section twenty-five, and until their successors are qualified.

Votes of stockholders.

In the choice of directors and at all meetings of the company each stockholder shall be entitled to one vote for each share he holds not in excess of one-tenth of the capital.

Proxies.

Proxies may be authorized by written power of attorney, but no officer shall vote as proxy.

Record and evidence of elections.

The record of the votes made by the secretary or clerk, which shall show whether the same were cast in person or by proxy, shall be evidence of all such elections.

Directors to accept.

The directors before they are qualified to act shall file with the secretary a written acceptance of the trust.

Quorum.

Not less than four shall constitute a quorum, and a majority of those in attendance may transact business.

Vacancies.

Vacancies in any office may be filled by the directors or by the stockholders as the by-laws shall provide.

Directors to elect president and other officers.

The directors shall annually choose by ballot a president, who shall be a member of the board, a secretary, and such other officers as the by-laws provide.

To call special meetings, when.

They may call special meetings of the stockholders whenever they deem proper, and shall call such meetings on the written application of the owners of one-fifth part of the capital, or of twenty shareholders, setting forth

the purposes of the same. They shall at each annual meeting of the company submit a full statement of the transactions of the company during the previous year, and of its financial condition. To make statement at annual meetings.

The president and secretary, and vice-president, if there be one, shall annually be sworn, and their oaths entered of record in the company's books. The president, or in his absence the vice-president, if there be one, shall preside at all meetings of the directors or stockholders. In the absence of the president and vice-president a president *pro tempore* may be chosen. Officers to be sworn. President, etc., to preside at meetings of directors and stockholders.

The secretary shall keep a record of the votes and proceedings of all meetings of the directors and of the stockholders; a list of the stockholders and the number of shares standing in the name of each; a record of all transfers of shares and of all policies issued and all authorized assignments, cancellations, and transfers thereof; and such additional books as the president and directors require. The records so kept shall be evidence of the transactions to which they relate and open to the inspection of any person interested therein; and for making any wilfully false record the secretary shall be deemed guilty of the crime of perjury. Secretary to keep record of votes, stockholders, policies, etc.

Personal Liability of Officers.

SECTION 33. The directors or other officer making or authorizing an investment or loan in violation of section thirty-four shall be personally liable to the stockholders for any loss occasioned thereby. Officer making illegal investment, or issuing policies when company is insolvent, or making over-insurance, personally liable for loss. P. S. 119, §§ 55, 57.

If a company is under liability for losses equal to its net assets, and the president and directors knowing it make or assent to further insurance, they shall be personally liable for any loss under such insurance.

If the directors allow to be insured on a single risk a larger sum than the law permits they shall be liable for any loss thereon above the amount they might lawfully insure.

Payment and Investment of Capital.

SECTION 34. The capital stock shall be paid in cash within twelve months from date of charter or certificate of organization, and no certificates of full shares and no policies shall be issued until the whole capital is paid in. A majority of the Capital to be paid in within twelve months and invested; directors to make certificate. P. S. 119, § 54.

Amount of. See § 32. No policies or certificate of shares to issue until whole capital is paid in.

directors shall certify on oath that the money has been paid by the stockholders for their respective shares and the same is held as the capital of the company invested or to be invested as required by this section.

Investments and loans of capital. P. S. 119, § 55. 1885, c. 308. Real estate. See § 25. Different classes of securities in which companies may invest their capital.

Such capital shall be invested only as follows:

First, In first mortgages of real estate in this Commonwealth.

Second, In public funds of the United States or of any of the New England states, New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois, Wisconsin and Iowa, and of the District of Columbia.

Third, In the bonds or notes of any city, county or town, or incorporated district of this Commonwealth; or of any city of any other of the New England states whose net indebtedness does not exceed five per cent. of the last preceding valuation of the property therein for purposes of taxation; or of any county or town of Maine, New Hampshire, Vermont, Rhode Island or Connecticut, whose net indebtedness does not exceed three per cent. of such valuation of its taxable property.

Fourth, In the legally authorized bonds for municipal purposes of any city of more than thirty thousand inhabitants in the states of New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois, Wisconsin and Iowa, whose net indebtedness at the date of such investment does not exceed five per cent. of the valuation of its property for assessment of taxes.

The term "net indebtedness" as used here and in the preceding clause excludes any debt created to provide a supply of water for general domestic use, and allows credit for the sinking-funds of a county, city, town, or district, available for the payment of its indebtedness.

Fifth, In the first mortgage bonds of any railroad company incorporated under the authority of any of the New England states and whose road is located wholly or in part in the same, and which is in possession of and operating its own road and has earned and paid regular dividends for the two years next preceding such investment; or in the first mortgage bonds, guaranteed by any such railroad company, of any railroad so incorporated whose road is thus located; or in the bonds, stocks or notes of any railroad company incorporated under the laws of this Commonwealth and whose road is located wholly or in part therein and is unencumbered by mortgage, and which has paid a dividend of not less than five per cent. per annum for two

years next preceding such investment; or in bonds, stocks and notes issued according to law of either the Old Colony Railroad Company, the Fitchburg Railroad Company, or the Worcester, Nashua and Rochester Railroad Company.

But the term "railroad companies" as here used shall not be construed to include street railway companies.

Sixth, In the stock of any bank incorporated under the authority of this Commonwealth, or of any banking association located in the New England States and incorporated under the authority of the United States.

Seventh, In loans upon the note or notes of any citizen of this Commonwealth secured by pledge as collateral of any of the before-named securities. Where the pledged securities are of those specified in the first, second, third or fourth clauses, as above, the loan thereon may be of an amount not more than their par value. Where the pledged securities are of those specified in the fifth and sixth clauses, the loan thereon shall not exceed their par value nor be more than four-fifths of their market value.

1896, c. 171.

And in addition the capital stock of insurance companies may be invested in any of the securities in which savings banks may invest their deposits.

Limit in amount of particular investments.

But no insurance company shall together own or hold in pledge more than one-fourth of the capital stock of any bank; nor invest in or lend upon the stock and bonds together of any railroad company more than one-tenth of its own capital; nor shall its entire investment in and loans upon all railroad property and securities exceed one-third of its capital; nor shall it loan more than sixty per cent. of its capital on mortgage of real estate, nor more than one-fifth of its capital in one mortgage.

Impairment, Increase and Reduction of Capital.

SECTION 35. When the net assets of a company do not amount to more than three-fourths of its original capital, it may make good its capital to the original amount by assessment of its stock.

Shares forfeited by non-payment of assessment.

Shares on which such an assessment is not paid within sixty days after demand shall be forfeitable, and may be cancelled by a vote of the directors, and new shares issued to make up the deficiency.

If capital not made good or reduced,

If such company shall not within three months after notice from the insurance commissioner to that effect make good its

authority of company to do business to cease.

capital as aforesaid, or reduce the same as allowed by section thirty-seven, its authority to transact new business of insurance shall cease.

May increase capital by issue of new shares to be paid for in full; or by dividends of actual net surplus. P. S. 119, §§ 69, 70, 71.

SECTION 36. Any such company may issue *pro rata* to its stockholders certificates of any portion of its actual net surplus it may deem fit to divide, which shall be deemed to be an increase of its capital to the amount of such certificates. And such company may, at a meeting called for the purpose, vote to increase the amount and number of shares of its capital stock, and to issue certificates thereof when paid for in full.

Certificate of increase to be approved by insurance commissioner and filed with secretary of the Commonwealth.

In whichever mode the increase is made, the company shall, within thirty days after the issue of such certificates, submit to the insurance commissioner a certificate setting forth the amount of the increase and the facts of the transaction, signed and sworn to by its president and secretary and a majority of its directors. If the commissioner finds that the facts conform to the law he shall indorse his approval thereof; and, upon filing such certificate so indorsed with the secretary of the Commonwealth, and the payment of a fee of five dollars for filing the same, the company may transact business upon the capital as increased, and the commissioner shall issue his certificate to that effect.

May reduce capital.

SECTION 37. When the capital stock of a company is impaired, such company may, upon a vote of the majority of the stock represented at a meeting legally called for that purpose, reduce its capital stock and the number of shares thereof to an amount not less than the minimum sum required by law. But no part of its assets and property shall be distributed to its stockholders.

The procedure; effect of. P. S. 119, §§ 65-67.

Within ten days after such meeting the company shall submit to the insurance commissioner a certificate setting forth the proceedings thereof and the amount of such reduction and the assets and liabilities of the company, signed and sworn to by its president, secretary and a majority of its directors. The commissioner shall examine the facts in the case, and if the same conform to law, and, in his judgment, the proposed reduction may be made without prejudice to the public, he shall indorse his approval upon the certificate.

Commissioner to approve the reduction.

Upon filing the certificate, so indorsed, with the secretary of the Commonwealth, and paying a fee of five dollars for the filing thereof, the company may transact business upon the

basis of such reduced capital as though the same were its original capital, and its charter shall be deemed to be amended to conform thereto; and the insurance commissioner shall issue his certificate to that effect.

May call in original stock certificates and issue substitute certificates. P. S. 119, § 69. See § 36.

Such company may, by a majority vote of its directors, after such reduction, require the return of the original certificates of stock held by each stockholder in exchange for new certificates it may issue in lieu thereof for such number of shares as each stockholder is entitled to in the proportion that the reduced capital bears to the original capital.

Dividends to be made only from surplus. P. S. 119, § 70.

Not to divide assets while policies remain in force.

SECTION 38. No stock company shall make a dividend, either in cash or stock certificates, except from its actual net surplus computed as required by law in its annual statement; nor shall any such company which has ceased to do new business of insurance divide any portion of its assets, except surplus to its stockholders, until it shall have performed or cancelled its policy obligations. Any such company may declare and pay, annually or semi-annually, from its surplus, cash dividends to its stockholders of not more than ten per cent. of its capital stock in a year; and if the dividends in any year are less than ten per cent. the difference may be made up in any subsequent year or years from surplus accumulations: *provided*, *however*, that any such company may pay such dividend as the directors may deem prudent out of any surplus that shall remain after charging in addition to all its liabilities, except unearned premiums, a sum equal to the whole amount of premiums on unexpired risks, and deducting from the assets all securities and book accounts on which no part of the principal or interest has been paid within the last year and for which foreclosure or suit has not been commenced for collection, or which after judgment obtained thereon shall have remained more than two years unsatisfied and on which interest shall not have been paid, and also deducting all interest due and unpaid on any property of the company.

Cash dividends limited to ten per cent. annually. P. S. 119, §§ 69, 72. 1891, c. 289.

(MUTUAL FIRE COMPANIES.)

Not to issue policies until $1,000,000 insurance is subscribed for. 1896, c. 126.

SECTION 39. No policy shall be issued by a purely mutual fire insurance company hereafter organized, nor by a mutual fire insurance company with a guaranty capital of less than one hundred thousand dollars, until not less than one million dollars of insurance, in not less than four hundred separate risks upon

Exception. P. S. 119, § 38. 1894, c. 500.

property located in Massachusetts, has been subscribed for and entered on its books; except that in any town of less than four thousand inhabitants a company may be formed to insure only dwelling houses, farm buildings, and their contents within such town, and may issue policies when fifty thousand dollars of insurance has been subscribed for. But no policy shall be issued under this section until the president and secretary of the company shall have certified under oath that each and every subscription for insurance in the list presented to the insurance commissioner for approval is genuine, and made with an agreement with each and every subscriber for insurance that he will take the policies subscribed for by him within thirty days of the granting of a license to the company by the insurance commissioner to issue policies. For taking a false oath in respect to such certificate such officers shall be deemed guilty of the crime of perjury, and be subject to the legal penalties therefor. No officer or other person whose duty it is to determine the character of the risks, and upon whose decision the applications shall be accepted or rejected by a mutual fire insurance company, shall receive as any part of his compensation a commission upon the premiums, but his compensation shall be a fixed salary and such share of the net profits as the directors may determine. Nor shall such officer or person aforesaid be an employee of any officer or agent of the company.

Oath required of president and secretary. 1907, c. 62.

Officers not to be paid commissions on premiums. 1894, c. 500.

Members and Elections.

All insured persons members; entitled to notice of meetings and to vote. P. S. 119, § 78.

SECTION 40. Every person insured by a mutual fire insurance company shall be a member while his policy is in force, entitled to one vote for each policy he holds, and shall be notified of the time and place of holding its meetings by a written notice or by an imprint upon the back of each policy, receipt or certificate of renewal, as follows, to wit: —

The assured is hereby notified that by virtue of this policy he is a member of the Insurance Company, and that the annual meetings of said company are holden at its home office on the day of in each year, at o'clock.

The blanks shall be duly filled in print, and the same shall be deemed a sufficient notice.

A corporation which becomes a member of such company may authorize any person to represent it in such company, and such representative shall have all the rights of an individual member.

Trustee of insured property and representative of insured corporation entitled to rights of a member. P. S. 119, §§ 84, 85.

Any person holding property in trust may insure the same in such company, and as such trustee assume the liabilities and be entitled to the rights of a member, but shall not be personaly liable upon such contract of insurance.

Proxies.

Members may vote by proxies dated and executed within three months and returned and recorded on the books of the company three days or more before the meeting at which they are to be used; but no person shall be allowed as proxy or otherwise to cast more than twenty votes, and no officer or agent shall himself or by another ask for, receive, procure to be obtained or use a proxy vote.

Number of votes a member may cast. Officer cannot hold proxy. P. S. 119, § 80. Penalty. Stat. § 107.

Every such company shall elect by ballot a board of not less than seven directors, who shall manage and conduct its business and who shall hold office for one year or for such term as the by-laws may provide, in accordance with section twenty-five and until their successors are qualified.

Two-thirds at least of the directors shall be citizens of the Commonwealth, and after the first election members only shall be eligible, but no director shall be disqualified from serving the term he was chosen for by reason of the expiration or cancellation of his policy: *provided*, that in companies with a guaranty capital one-half of the directors shall be chosen by and from the stockholders.

Five or more of the directors shall constitute a quorum for the transaction of business by the vote of a majority of those in attendance.

Vacancies in any office may be filled in such manner as the by-laws shall provide.

Powers and Duties of Officers.

Directors to elect president, etc. P. S. 119, §§ 81, 82.

SECTION 41. The directors shall annually choose by ballot a president who shall be a member of the board, a secretary, a treasurer who may also be either the president or secretary, and such other officers as the by-laws provide.

To call special meetings, when.

They may call special meetings of the members of the corporation whenever they see fit, of which each member shall have such notice as the by-laws provide, and shall call such meetings upon the written request of twenty members or of the owners

of one fifth of the guaranty capital, setting forth the purpose thereof.

Officers to be sworn.

The president, the vice-president, if there be one, and the secretary, and treasurer shall be annually sworn, and their oaths be entered of record in the books of the corporation. The president, or in his absence the vice-president, shall preside at all meetings of the directors or members. In the absence of both, a president *pro tempore* may be chosen.

President, etc., to preside at meetings.

The secretary to keep record of transactions

The secretary shall keep a record of the votes, whether cast in person or by proxy, and the other proceedings of all meetings of the directors and of the members; a true list of the holders of the guaranty capital, if any, the number of shares owned by each, and a record of all transfers of such shares; and shall record all policies issued and all authorized assignments, transfers and cancellations thereof; and such other books and records as the president and directors may require.

Record to be evidence. Penalty for false record.

The records so kept shall be evidence of the transactions to which they relate, and for making any wilfully false record the secretary shall be deemed guilty of the crime of perjury. Such records shall be open to the inspection of any person interested therein.

Companies with a Guaranty Capital.

Amount of capital. P. S. 119, §§ 74, 75, 76. 1895, c. 190.

SECTION 42. A mutual fire insurance company may be formed with, or a mutual fire insurance company now existing may establish, a guaranty capital of not less than twenty-five thousand dollars nor more than two hundred thousand dollars, divided into shares of one hundred dollars each, which shall be invested in the same manner as is provided for the investment of the capital stock of certain insurance companies by section thirty-four of this act. The stockholders of the guaranty capital of a company, acquired under the provisions of the Public Statutes of this Commonwealth, or of any acts subsequent thereto, shall be entitled to a semi-annual dividend of not more than three and one-half per cent. on their respective shares if the net profits or unused premiums left after all expenses, losses and liabilities then incurred, together with the reserve for reinsurance, are provided for, shall be sufficient to pay the same. The guaranty capital shall be applied to the payment of losses only when the company has exhausted its cash in hand and the invested assets, exclusive of uncollected premiums, and

What dividends shareholders are entitled to.

When guaranty capital is liable for losses.

when thus impaired, the directors may make good the whole or any part of it by assessments upon the contingent funds of the company at the date of such impairment. Shareholders and members of such companies shall be subject to the same provisions of law in respect to their right to vote as apply respectively to shareholders in stock companies and policy holders in purely mutual companies; and said guaranty capital shall be retired when the permanent fund of the company equals two per cent. of the amount insured upon all policies in force; and said guaranty capital may be reduced or retired by vote of the policy holders of the company and the assent of the insurance commissioner, provided the net assets of the company above its reinsurance reserve and all other claims and obligations, exclusive of guaranty capital, for two years immediately preceding and including the date of its last annual statement, shall be not less than twenty-five per cent. of the guaranty capital. Due notice of such proposed action on the part of the company shall be mailed to each policy holder of the company not less than thirty days before the meeting when such action may be taken, and shall also be advertised in two papers of general circulation approved by the insurance commissioner, not less than three times a week for a period of not less than four weeks before said meeting. No insurance company with a guaranty capital, which has ceased to do new business, shall divide to its stockholders any part of its assets or guaranty capital except income from investments until it shall have performed or cancelled its policy obligations.

Impairment of capital, how made good.

Right to vote of shareholders and members.

Permanent Fund.

SECTION 43. The net profits, by which term is meant all of the funds remaining after deducting all liabilities (including unearned premiums) of the mutual fire insurance companies and the special reserve of companies having a guaranty capital as existing on the thirty-first day of December in the year eighteen hundred and eighty-nine, are hereby set apart as and declared to be the permanent fund of such companies; the directors shall cause the same to be invested in the securities described in section thirty-four, and the same shall be held as a reserve for the security of the insured. When the amount of this permanent fund is less than two per cent. of the sum

Mutual companies may accumulate a permanent fund. P. S. 119, § 96. 1890, c. 26.

Limit of accumulation.

insured upon all policies in force, the director may annually, if they so determine, set apart not exceeding twenty per cent. of the net profits of the preceding year, and add the same to the permanent fund, until said limitations of two per cent. has been reached, after which there shall be no further addition to said fund except as hereinafter provided. The permanent fund so accumulated shall be used for the payment of losses and expenses whenever the cash funds of the company in excess of an amount equal to its liabilities, including guaranty capital, are exhausted; and whenever the said fund is drawn upon, the reservation of profits as aforesaid may be renewed or continued until the limit of accumulation as herein provided is reached. The income of the permanent fund shall be included annually in the cash receipts of the company: *provided*, that nothing herein contained shall affect the rights, at the date of the passage of this act, of holders of policies in companies having a guaranty capital.

Dividends and Assessments.

Members entitled to profits and liable for losses. P. S. 110, §§ 67, 107.

SECTION 44. The directors of any mutual fire insurance company may, from time to time, by vote, fix and determine the amount to be paid as a dividend upon policies expiring during each year. In the year eighteen hundred and ninety-five, and at the expiration of each term of five years thereafter, the directors shall, subject to the provisions of section forty-three, apportion as an extra dividend, according to their best judgment, proportionately to the holders of policies which have expired during the preceding five-year period the entire remaining net profits. Any such dividends remaining uncalled for on the thirty-first day of December in the year eighteen hundred and ninety-nine, and at the end of each five-year period thereafter, shall be forfeited to the company. Each policy holder shall be liable to pay his proportional part of any assessments which may be laid by the company in accordance with law and his contract on account of losses and expenses incurred while he was a member, provided he is notified of such assessment within one year after the expiration of his policy. Mutual companies which make not less frequently than annually an entire apportionment and division of earnings or profits shall not be subject to the provisions of sections forty-three and forty-four.

1897, c. 197.

Companies shall collect full mutual premiums.

SECTION 45. Mutual fire insurance companies, except as provided in the next section, shall charge and collect upon their policies a full mutual premium in cash, or notes absolutely payable. Any such company may in its by-laws and policies fix the contingent mutual liability of its members for the payment of losses and expenses not provided for by its cash funds: *provided*, that such contingent liability of a member shall not be less than a sum equal to and in addition to the cash premium written in his policy. The total amount of the liability of the policy holder shall be plainly and legibly stated upon the back of each policy. Whenever any reduction is made in the contingent liability of members such reduction shall apply proportionally to all policies in force.

May fix the contingent liability of members not less than.

Liability to be stated on policy.

Certain companies may do business with deposit notes. P. S. 119, § 115.

SECTION 46. Mutual fire insurance companies now organized and lawfully doing business upon the plan of taking deposit notes for a percentage of the amount insured by its policies, and making a call or assessment thereon for the payment of losses and expenses as the same are incurred, may continue such system of business, and such deposit notes shall constitute the entire liability of their members.

Assessments.

Assessments, when to be made; record of the order for the assessment and a statement to be made. P. S. 119, §§ 98, 99.

SECTION 47. Whenever a mutual fire insurance company is not possessed of cash funds above its reinsurance reserve, sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor, in proportion to their several liability.

The company shall cause to be recorded in a book kept for that purpose the order for such assessment, together with a statement which shall set forth the condition of the company at the date of the order, the amount of its cash assets and of its deposit notes or other contingent funds liable to the assessment, the amount the assessment calls for and the particular losses or other liabilities it is made to provide for. Such record shall be made and signed by the directors who voted for the order, before any part of the assessment is collected, and any person liable to the assessment may inspect and take a copy of the same.

Alternative assessments, compulsory and

SECTION 48. When by reason of depreciation or loss of its funds or otherwise the cash assets of such a company, after

optional, may be made. P. S. 119, § 100.

providing for its other debts, are less than the required premium reserve upon its policies, it shall make good the deficiency by assessment in the mode provided in the preceding section; or if the directors are of the opinion that the company is liable to become insolvent they may, instead of such assessment, make two assessments, the first determining what each policy-holder must equitably pay or receive in case of withdrawal from the company and having his policy cancelled, the second what further sum each must pay in order to reinsure the unexpired term of his policy at the same rate as the whole was insured at first. Each policy-holder shall pay or receive according to the first assessment, and his policy shall then be cancelled, unless he pays the sum further determined by the second assessment, in which case his policy shall continue in force; but in neither case shall a policy-holder receive or have credited to him more than he would have received on having his policy cancelled by vote of the directors, under the by-laws.

Unless both assessments are paid on policies of the amount of $500,000 the company to cease business. P. S. 119, § 106.

If within two months after such alternative assessments have become collectible the amount of the policies whose holders have settled for both assessments is less than five hundred thousand dollars, the company shall cease to issue policies; and all policies whose holders have not settled for both assessments shall be void, and the company shall continue only for the purpose of adjusting the deficiency or excess of premiums among the members, and settling outstanding claims.

Members to be notified of assessment. P. S. 119, § 107. 1897, c. 197.

No assessment shall be valid against a person who has not been duly notified thereof within one year after the expiration or cancellation of his policy. And when an assessment is ordered the directors shall forthwith cause written notice and demand for payment to be made upon each person subject thereto, by mail or personal service.

Supreme judicial court may order assessment or adjudge the necessity of one called by directors; procedure; decree of the court P. S. 119, §§ 101, 105.

SECTION 49. When the directors make an assessment or call on the members for money, or vote that there exists a necessity for such assessment or call, they or any person interested in the company as an officer, policy-holder or creditor, may apply to the supreme judicial court for any county, by a petition in the nature of a bill in equity, praying the court to examine said assessment or call, the necessity therefor, and all matters connected therewith, and to ratify, amend or annul the assessment or call, or to order that the same be made as law and justice may require; but application when made by

any party except the corporation, or a receiver, or the insurance commissioner, shall rest in the discretion of the court. When the directors unreasonably neglect to make an assessment or call to satisfy an admitted or ascertained claim upon the company, any judgment creditor, or any person holding such claim, or the insurance commissioner, may make the application to the court. Upon such application, if made by the directors, or upon an order of the court, if made by any other party, the directors shall set forth the claims against the company, its assets, and all other facts and particulars appertaining to the matter.

The court before which such petition is filed shall order notice to be given by publication or otherwise to all parties interested, and upon the return thereof shall proceed to examine the assessment or call, or the necessity therefor, and all matters connected therewith. Any parties interested may appear and be heard thereon. All questions that arise shall be heard and determined as in other equity cases.

The application shall be referred to an auditor, who shall appoint a time and place to hear all parties interested, and shall give personal notice thereof in writing to the insurance commissioner, and through the post-office, so far as he is able, to all persons liable upon said assessment or call. The auditor shall hear the parties, and report upon the correctness of the assessment or call, and all matters connected therewith. The court may ratify, amend or annul the assessment or call, or order one to be made; and may make such orders and decrees in the premises as under all the circumstances justice and equity require. If the assessment or call is altered or amended, or one is ordered to be made, the directors shall forthwith proceed to vote the same in legal form, and the record of such vote shall be set forth in a supplemental bill or answer.

When an assessment or call has been so ratified, ascertained or established, a decree shall be entered which shall be final and conclusive upon the company and all parties liable to the assessment or call, as to the necessity of the same, the authority of the company to make or collect the same, the amount thereof, and all formalities connected therewith. An assessment or call altered or amended by vote of directors and decree of the court thereon shall be binding upon all parties who would have

been liable under it as originally made, and in all legal proceedings shall be held to be such original assessment or call. All such proceedings shall be at the cost of the company, unless the court for cause otherwise orders; and in all cases the court may control the disposition of the funds collected under such proceedings.

If it appears to the court before which such application is pending that the net proceeds of any assessment or call will not be sufficient to furnish substantial relief to those having claims against the company, the judge may decree that no assessment shall be collected; and when, upon the application of the insurance commissioner or a member of the company, or of any person interested, the judge is of opinion that further attempts to collect an assessment then partially collected will not benefit those having claims against the company, he may stay the further collection of said assessment.

Personal Liability of Officers.

Officer shall give no guaranty against assessment. P. S. 119, § 108. Penalty. See § 106.

SECTION 50. No director or other officer of a mutual fire insurance company shall either officially or privately give a guaranty to a policy-holder thereof against an assessment to which he would otherwise be liable.

Directors liable if they neglect to make assessment. P. S. 119, §§ 109, 110.

If the directors of any such company shall neglect or omit for the space of six months to lay and collect with all practicable diligence any assessment they are required to make by sections forty-eight and forty-nine, they shall be personally liable for all debts and claims then outstanding against the company, or that may accrue until such assessment is laid and put in process of collection.

Treasurer liable for neglect to collect assessment. P. S. 119, § 112.

If the treasurer of such company unreasonably neglects to collect an assessment made by order of the directors, and to apply the same to the payment of the claims for which it was made, he shall be liable in his private capacity to the party having such claims, for the amount of the assessment; and he may repay himself out of any money afterwards received for the company on account of said assessment.

Directors liable for neglect to satisfy judgment or assess therefor.

When sufficient property of any such company cannot be found to satisfy an execution issued against it, and it has property belonging to the period assessed, the proceeds of which can be applied to satisfy such execution, if the directors neglect to pay the same, or neglect for thirty days after the

rendition of judgment to make an assessment and deliver the same to the treasurer for collection, or to apply such assessment when collected to the payment of the execution, they shall be personally liable for the amount of the execution.

When the directors of any such company are liable to pay an execution against it the creditor may recover the same by a suit in equity or by an action at law against the directors. The director who pays an execution against the company for which he is personally liable may have a suit at law with equitable remedies for contribution against any of the directors for their proportion, and also a suit at law with equitable remedies against the company or the individual members thereof to the extent of their several liability to assessment therefor.

Remedy of judgment creditor, and of director who pays an execution. P. S. 119, §§ 110, 111.

Limit of Risks.

SECTION 51. Mutual fire insurance companies may insure property in any of the New England states, New York, New Jersey and Pennsylvania. Such companies which have a guaranty capital or which insure manufacturing as well as other property may make insurances upon property located in any part of the United States or in Canada.

Location of property companies may insure. P. S. 119, § 83. 1886, c. 222. See §§ 20, 56, 57. 1893, c. 54.

MUTUAL MARINE AND MUTUAL FIRE AND MARINE COMPANIES.

SECTION 52. A mutual marine insurance company organized under this act shall have an agreement under the seal of each subscriber thereto, substantially as follows, namely:

Mutual marine company to have a subscription liability fund.

The subscribers severally agree to pay to the Insurance Company on demand the whole or such part of the sums set against our names as may be called from time to time for the use of said company in the payment of its losses and expenses not otherwise provided for.

Form of subscription. P. S. 119, § 116.

Such companies shall not issue policies until the amount of three hundred thousand dollars, which shall be the total of such subscriptions, shall have been so subscribed, and a certificate signed by the president and a majority of the directors, certifying that the subscribers are known to them and that they believe them to be solvent and able to pay their subscriptions, has been deposited with and approved by the insurance commissioner. Whenever a subscriber dies or becomes insolvent his subscription shall be cancelled, and whenever the amount of

Not to issue policies until $300,000 is subscribed and certified.

Amount of subscriptions to be kept good.

the subscription fund is thereby or otherwise reduced, the deficiency shall be made good by new subscriptions certified in the same manner as the original. Subscribers shall be entitled to annual dividends of two per cent. upon the amount of their subscriptions from the profits of the company, and shall also be reimbursed from future profits for all sums of money they may pay the company for its uses under their agreement, with lawful interest thereon.

Subscribers entitled to dividends and reimbursement of payments upon subscriptions.

Company shall accumulate profits and issue scrip therefor.

The net profits or divisible surplus of such companies shall be annually divided among the insured whose policies terminated within the year, in proportion to the contribution of each to such profits or surplus, and such dividends shall be made only in scrip certificates payable only out of the accumulation of net profits or surplus, which accumulation shall constitute and be kept and invested by the company as a separate fund in trust for the redemption of such scrip certificates and the contingent payment of losses and expenses as herein provided. Such certificates until redeemed shall be subject to future losses and expenses of the company and to be reduced in case the redemption fund is drawn upon for the payment of such loss and expenses. But no part of the redemption fund shall be used for the payment of losses or expenses unless and only to the extent that the cash assets of the company are insufficient therefor; and whenever any portion thereof shall be used for such payment the outstanding certificates shall be reduced in proportion, so that the redemption fund shall at all times equal the amount of the unredeemed certificates. The net income of the redemption fund shall be divided annually among the holders of its certificates; or the company may make such certificates with a specific rate of interest payable from the income of its invested funds. As such profits accumulate and are invested, subscriptions of an equal amount shall be cancelled.

Limit of accumulation of profits.

The maximum of such accumulation of profits shall be three hundred thousand dollars, and all excess of profits above said amount shall be applied annually to the payment of the certificates in the order of their issue. The certificates shall be forthwith payable when the company shall cease to issue policies and the fund is no longer liable to be drawn upon for the payment of losses.

Companies heretofore organized. P. S. 119, §§ 117, 150.

SECTION 53. Every mutual marine and mutual fire and marine insurance company heretofore organized under any law of the Commonwealth shall remain subject to the provisions

applicable to each contained in sections one hundred and seventeen to one hundred and thirty inclusive, of chapter one hundred and nineteen of the Public Statutes, notwithstanding the repeal of said chapter. Any such company may redeem its certificates of dividends of profits when its permanent fund has been paid in cash and invested and its surplus is sufficient for the purpose. The shareholders of the permanent fund of any such company shall hereafter be entitled to not exceeding five per cent. semi-annual dividends thereon.

May redeem certificates of profits.

Dividends to shareholders reduced.

Section 54. All domestic mutual marine insurance companies shall be subject to the provisions of sections forty and forty-one, and each subscriber to the permanent fund, or agreement specified in section fifty-two, of any such company shall be a member thereof during the term of his subscription and entitled to one vote.

Rights of members; election, powers and duties of officers.

Personal Liability of Officers.

Section 55. If a subscriber to the permanent fund or agreement of a mutual marine or mutual fire and marine insurance company fails to pay his subscription or any assessment thereon, and it is proven that the president or a director certified falsely in regard to such subscriber, the person certifying shall be liable to the company for such sum as the subscriber fails to pay.

For certifying falsely. P. S. 119, § 119.

If any such company is at any time liable for losses beyond the amount of its net assets the president and directors shall be personally liable for all losses on insurance effected while the company was in such condition.

For over-insurance. P. S. 119, § 123. 10 Gray, 325. 12 Gray, 355.

FIRE INSURANCE.

[Section 56 was repealed by chap. 178, Acts of 1898.]

Section 57. No insurance company shall knowingly issue any fire insurance policy upon property within this Commonwealth for an amount which together with any existing insurance thereon exceeds the fair value of the property, nor for a longer term than seven years.

Over-insurance forbidden. P. S. 119, § 136.

[When buildings insured against loss by fire, and situated within this Commonwealth, are totally destroyed by fire, the company shall not be liable beyond the actual value of the insured property at the time of the loss or damage; and if it shall appear that the insured has paid premiums on a sum in excess of said actual value the assured shall be reimbursed the proportionate excess of premiums paid on the difference between the

amount named in the policy and the ascertained value, with interest at six per cent. per annum from the date of issue; and said excess of premiums and interest thereon shall be allowed the insured from the time any company or companies carrying said insurance at the time of the loss have continuously carried the insurance on the destroyed building or buildings, whether under policies existing at the time of the loss or under previous policies in the same company or companies.

This act shall take effect on the first day of October in the year eighteen hundred and ninety-eight.] Chap. 571, Acts of 1898.

[Every insurance company transacting business in this Commonwealth shall, upon receiving notice of loss by fire upon property in Massachusetts on which it is liable under a policy of insurance, forthwith notify the state fire marshal thereof, and no insurance upon any such property shall be paid by any company until one week after such notification.] Chap. 118, Acts of 1897.

Payment to mortgagees protected by policies. P. S. 119, § 137.

SECTION 58. Where by an agreement with the insured or by the terms of a fire insurance policy taken out by a mortgagor the whole or any part of the loss thereon is payable to a mortgagee or mortgagees of the property or for their benefit the company shall, upon satisfactory proof of the rights and title of the parties, in accordance with such terms or agreement, pay all mortgagees protected by such policy in the order of their priority of claim, as their claim shall appear, not beyond the amount for which the company is liable, and such payment shall be, to the extent thereof, payment and satisfaction of the liability of the company under such policy.

Applications and by-laws no warranties unless incorporated in the policy. P. S. 119, § 138.

SECTION 59. In all insurance against loss by fire the conditions of insurance shall be stated in full, and neither the application of the insured nor the by-laws of the company shall be considered as a warranty or a part of the contract, except so far as they are incorporated in full into the policy.

Standard form of fire policy. Penalty. See § 105.

SECTION 60. No fire insurance company shall issue fire insurance policies on property in this Commonwealth, other than those of the standard form herein set forth, except as follows, to wit:

First, A company may print on or in its policies its name, location, and date of incorporation, the amount of its paid-up capital stock, the name of its officers and agents, the number and date of the policy, and, if it is issued through an agent, the words "This policy shall not be valid until countersigned by the duly authorized agent of the company at ."

Second, A company may print or use in its policies printed forms of description and specification of the property insured.

Third, A company insuring against damage by lightning may print, in the clause enumerating the perils insured against, the additional words "Also any damage by lightning, whether fire ensues or not," and, in the clause providing for an apportionment of loss in case of other insurance, the words "whether by fire, lightning or both."

Fourth, A company incorporated or formed in this Commonwealth may print in its policies any provisions which it is authorized or required by law to insert therein; and any company not incorporated or formed in this Commonwealth may, with the approval of the insurance commissioner, so print any provision required by its charter or deed of settlement, or by the laws of its own state or country, not contrary to the laws of this Commonwealth: *provided*, that the insurance commissioner shall require any provision which, in his opinion, modifies the contract of insurance in such way as to affect the question of loss, to be appended to the policy by a slip or rider as hereinafter provided.

Fifth, The blanks in said standard form may be filled in print or writing.

Sixth, A company may print upon policies issued in compliance with the preceding provisions of this section the words "Massachusetts Standard Policy."

Seventh, A company may write upon the margin or across the face of a policy, or write, or print in type not smaller than long primer, upon separate slips or riders to be attached thereto, provisions adding to or modifying those contained in the standard form; and all such slips, riders and provisions must be signed by the officers or agent of the company so using them.

The said standard form of policy shall be plainly printed, and no portion thereof shall be in type smaller than long primer, and shall be as follows, to wit:

No. $———

[Corporate name of the company or association; its principal place or places of business.]

This company shall not be liable beyond the actual value of the insured property at the time any loss or damage happens.

In consideration of dollars to it paid by the insured, hereinafter named, the receipt whereof is hereby acknowledged, does insure and legal representatives against loss or damage by fire, to the amount of dollars.

(Description of property insured.)

Property not covered by policy.

Bills of exchange, notes, accounts, evidences and securities of property of every kind, books, wearing apparel, plate, money, jewels, medals, patterns, models, scientific cabinets and collections, paintings, sculpture, and curiosities are not included in said insured property, unless specially mentioned.

Term. 1895, c. 50.

Said property is insured for the term of , beginning on the day of , in the year hundred and , at noon, and continuing until the day of , in the year hundred and , at noon, against all loss or damage by FIRE originating from any cause except invasion, foreign enemies, civil commotions, riots, or any military or usurped power whatever; the amount of said loss or damage to be estimated according to the actual value of the insured property at the time when such loss or damage happens, but not to include loss or damage caused by explosions of any kind unless fire ensues, and then to include that caused by fire only.

Perils insured against.

Matters voiding policy.

This policy shall be VOID if any material fact or circumstance stated in writing has not been fairly represented by the insured, — or if the insured now has or shall hereafter make any other insurance on the said property without the assent in writing or in print of the company, — or if, without such assent, the said property shall be removed, except that, if such removal shall be necessary for the preservation of the property from fire, this policy shall be valid without such assent for five days thereafter, — or if, without such assent, the situation or circumstances affecting the risk shall, by or with the knowledge, advice, agency or consent of the insured, be so altered as to cause an increase of such risks, or if, without such assent, the said property shall be sold, or this policy assigned, or if the premises hereby insured shall become vacant by the removal of the owner or occupant, and so remain vacant for more than thirty days without such assent, or if it be a manufacturing establishment, running, in whole or in part, extra time, except that such establishments may run, in whole or in part, extra hours not later than nine o'clock P.M., or if such establishments shall cease operation for more than thirty days without permission in writing indorsed hereon, or if the insured shall make any attempt to defraud the company either before or after the loss, — or if gunpowder or other articles subject to legal restriction shall be kept in quantities or manner different from those allowed or prescribed by law, — or if camphene, benzine, naphtha, or other chemical oils or burning fluids shall be kept or

used by the insured on the premises insured, except that what is known as refined petroleum, kerosene, or coal oil, may be used for lighting, and in dwelling-houses kerosene-oil stoves may be used for domestic purposes, — to be filled when cold, by daylight, and with oil of lawful fire test only. 1895, c. 59.

If the insured property shall be exposed to loss or damage by fire, the insured shall make all reasonable exertions to save and protect the same. Assured to protect property in case of exposure to fire.

In case of any loss or damage under this policy, a STATEMENT in writing, signed and sworn to by the insured, shall be forthwith rendered to the company, setting forth the value of the property insured, the interest of the insured therein, all other insurance thereon, in detail, the purposes for which and the persons by whom the building insured, or containing the property insured, was used, and the time at which and manner in which the fire originated, so far as known to the insured. The company may also examine the books of account and vouchers of the insured, and make extracts from the same. Statement by insured in case of loss.

In case of any loss or damage, the company, within sixty days after the insured shall have submitted a statement, as provided in the preceding clause, shall either pay the amount for which it shall be liable, *which amount if not agreed upon shall be ascertained by award of referees as hereinafter provided*, or replace the property with other of the same kind and goodness, — or it may, within fifteen days after such statement is submitted, notify the insured of its intention to rebuild or repair the premises, or any portion thereof separately insured by this policy, and shall thereupon enter upon said premises and proceed to rebuild or repair the same with reasonable expedition. It is moreover understood that there can be no abandonment of the property insured to the company, and that the company shall not in any case be liable for more than the sum insured, with interest thereon from the time when the loss shall become payable, as above provided. Payment of loss to be made within sixty days after proof, unless company elects to replace or repair.

If there shall be any OTHER INSURANCE on the property insured, whether prior or subsequent, the insured shall recover on this policy no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured thereon. And whenever the company shall pay any loss, the insured shall assign to it, to the extent of the amount so paid, all rights to recover satisfaction for the loss or damage from any person, town or other corporation, excepting other insurers; or the insured, if requested, shall prosecute therefor at the charge and for the account of the company. Apportionment of loss in case of other insurance. Insured to assign to company claims against third parties.

If this policy shall be made payable to a mortgagee of the insured real estate, no act or default of any person other than such mortgagee or his agents, or those claiming under him, shall affect such mortgagee's right to recover in case of loss on such real estate: *provided*, Rights of parties in case the policy is made payable to a mortgagee.

that the mortgagee shall, on demand, pay according to the established scale of rates for any increase of risks not paid for by the insured; and whenever this company shall be liable to a mortgagee for any sum for loss under this policy, for which no liability exists as to the mortgagor, or owner, and this company shall elect by itself, or with others, to pay the mortgagee the full amount secured by such mortgage, then the mortgagee shall assign and transfer to the companies interested, upon such payment, the said mortgage, together with the note and debt thereby secured.

Cancellation of policy.

This policy may be CANCELLED at any time at the request of the insured, who shall thereupon be entitled to a return of the portion of the above premium remaining, after deducting the customary monthly short rates for the time this policy shall have been in force. The company also reserves the right, after giving written notice to the insured, and to any mortgagee to whom this policy is made payable, and tendering to the insured a ratable proportion of the premium, to cancel this policy as to all risks subsequent to the expiration of ten days from such notice, and no mortgagee shall then have the right to recover as to such risks.

Differences to be submitted to referees.

In case of loss under this policy and a failure of the parties to agree as to the amount of loss, it is mutually agreed that the amount of such loss shall be referred to three disinterested men, the company and the insured each choosing one out of three persons to be named by the other, and the third being selected by the two so chosen; the award in writing by a majority of the referees shall be conclusive and final upon the parties as to the amount of loss or damage, and such reference unless waived by the parties *shall be a condition precedent to any right of action in law or equity to recover for such loss*; but no person shall be chosen or act as a referee against the objection of either party, who has acted in a like capacity within four months.

No suit or action against this company for the recovery of any claim by virtue of this policy shall be sustained in any court of law or equity in this Commonwealth unless commenced within two years from the time the loss occurred.

In witness whereof the said company has caused this policy to be signed by its president and attested by its secretary [or by such proper officers as may be designated], at their office in [date].

1897, c. 357.

In case of loss under any fire insurance policy, issued on property in this Commonwealth, in the standard form above set forth, and the failure of the parties to agree as to the amount of loss, the insurance company shall, within ten days after a written request to appoint referees under the provision for

arbitration in such policy, name three men under such provision, each of whom shall be a resident of this Commonwealth and willing to act as one of such referees; and such insurance company shall, within ten days after receiving the names of three men named by the insured under such provision, make known to the insured its choice of one of them to act as one of such referees. And in case of the failure of two referees, chosen, respectively, by the insurance company and the insured, to agree upon and select within ten days from their appointment a third referee willing to act in said capacity, either of the parties may within twenty days from the expiration of said ten days make written application, setting forth the facts, to the insurance commissioner to appoint such third referee; and said commissioner shall thereupon make such appointment and shall send written notification thereof to the parties. In every case of the appointment by the insurance commissioner of said third referee the insuring company or companies shall withhold from the amount of the award rendered one half of the compensation and expenses of said referee, and the said company or companies shall thereupon be obligated to pay to the said referee the full amount of the expenses for such reference. 1896, c. 137.

FIDELITY INSURANCE AND CORPORATE SURETY.

Fidelity insurance companies may insure the fidelity of persons and act as surety on bonds, etc. 1884, c. 296. 1885, c. 241.

SECTION 61. Any company organized under this act or chartered by any other state or government to transact fidelity insurance and corporate suretyship, and qualified to do business in this Commonwealth, may make contracts of insurance to guarantee the fidelity of persons holding positions of trust in private or public employment or responsibility, and may, if accepted and approved by the court, magistrate, obligee, or person competent to approve such bond, act as surety upon the official bond or undertaking in civil procedure of any person or corporation to the United States, to the Commonwealth of Massachusetts, or to any county, city, town, judge of probate and insolvency, sheriff or other court, magistrate or public officer, or to any corporation or association public or private; and also may act as surety upon any bond or undertaking to any person or corporation or to the Commonwealth of Massachusetts conditioned upon the performance of any duty or trust or for the doing or not doing of anything in said bond specified, and upon bonds to indemnify against loss any person 1899, c. 364.

or persons who are responsible as surety or sureties upon a written instrument or otherwise for the performance by others of any office, employment, contract or trust. Where by law two or more sureties are required upon any obligation such company is authorized to insure, it may act as sole surety thereon, and may be accepted as such by the court, magistrate or other officer or person authorized to approve the sufficiency of such bond or undertaking; and so much of section one of chapter one hundred and forty-three of the Public Statutes as requires that sureties on bonds to a judge of probate shall be residents of the Commonwealth shall not be construed to forbid the acceptance of a qualified foreign corporation as joint or sole surety on any such bond. No such company shall incur in behalf or on account of any one person, partnership, association or corporation a liability for an amount larger than one-tenth of its paid-up capital, unless it shall be secured from loss thereon beyond that amount by suitable and sufficient collateral agreements of indemnity, by deposit with it in pledge or conveyance to it in trust for its protection, of property equal in value to the excess of its liability over such limit, or, in case such liability is incurred in behalf or on account of a fiduciary holding property in a trust capacity, by such deposit or other disposition of a suitable and sufficient portion of the estate so held, that no further sale, mortgage, pledge or other disposition can be made thereof without such company's approval, except by the decree of a court having proper jurisdiction.

May be sole surety in certain cases, and upon probate bonds, though non-resident.

Limit of liability a company may incur.

Any person, partnership, association or corporation holding property for the benefit of another, except when acting under wills allowed or trusts created before the passage of this act, may make such covenants with the surety or sureties upon his official bond as shall enable such fiduciary to secure said surety or sureties from loss in any manner provided by this section: *provided, however*, that if such fiduciary was appointed by the decree of any court within this Commonwealth, the approval of such court shall first be obtained to such covenant. A copy of such covenant, duly acknowledged in the manner required for the acknowledgment of deeds of real estate, may be filed and recorded as follows: in the office of the clerk or register of the court in which such fiduciary obtained his appointment; if not appointed by the decree of court, in the manner provided by law for the record of deeds of real estate,

if said covenant concerns real estate, or mortgages of personal property, if said covenant concerns personal property. Such record shall be notice to and binding on all persons.

[Any city may by vote of the city council and any town may at a legal town meeting, vote to raise and appropriate money to pay a proper charge of an insurance company for acting as surety on the official bond given to such city or town by any of its officers for the faithful discharge of their duties. The city authority authorized to approve the bond of a city officer, or the selectmen of a town, may accept an insurance company as sufficient surety upon such bond; but no insurance company shall be so accepted unless it is qualified to do business in this Commonwealth.] Compilation of chap. 132, Acts of 1897, and chap. 45, Acts of 1898.

[See provision relative to surety companies, page 11.]

REAL ESTATE TITLE INSURANCE.

Organization of companies to insure against real estate incumbrances and defects of title, etc. 1884, c. 180.

SECTION 62. Companies may be formed in the manner provided in this chapter, with a capital of not less than two hundred thousand dollars nor more than one million dollars, for the purpose of examining titles to real estate, of furnishing information in relation thereto, and of insuring owners and others interested therein against loss by reason of incumbrances and defective title.

Subject to P. S. 106. Not subject to this act except.

Such companies shall not be subject to the provisions of this chapter except as regards the manner of their formation and as follows, to wit:

Shall file evidence of organization with commissioner and obtain certificate of authority to do business.

Any such corporation, before it shall issue any policy or make any contract of guarantee or insurance, shall file with the insurance commissioner a certified copy of the record of its certificate of its organization in the office of the secretary of the Commonwealth, and shall obtain from the insurance commissioner his certificate that it has complied with the laws applicable to it and is authorized to do business.

To make annual statements of condition.

Every such corporation shall, on or before the fifteenth day of January of each year, file in the office of the insurance commissioner a statement such as he may require of its condition and of its affairs for the year ending on the preceding thirty-first day of December, signed and sworn to by its president or secretary or treasurer and one of its directors, and for neglect to file such annual statements or for making a wilfully false statement shall be liable to the same penalties as

Penalty for neglect or false statement.

Commissioner may visit and examine companies.

are imposed upon insurance companies. The insurance commissioner shall have the same power and authority to visit and examine such corporations as he has in the case of domestic insurance companies, and the duties and liabilities of such corporations and their agents in reference to such examination shall be the same as those of domestic insurance companies.

Not less than two fifths of capital to be set apart and invested in trust for protection of policy-holders.

SECTION 63. Every such corporation shall set apart a sum not less than two fifths of its capital, and not less than one hundred thousand dollars in any case, as a guaranty fund, and shall invest the same in the securities in which domestic insurance companies may invest their capital, and shall issue no policy and make no contract of guaranty or insurance until such sum is so set apart and invested.

The principal of such guaranty fund shall be a trust for the protection of policy-holders and shall be applied only to the payment of losses and expenses incurred by reason of the guaranty or insurance contracts of the corporation. Whenever the corporation shall increase its capital, two fifths or a sufficient part of the increase shall be set apart and duly invested and added to the guaranty fund so that such fund shall always be not less in amount than two fifths of the entire capital.

Guaranty fund when impaired to be made good.

Whenever, by reason of losses or other cause, the guaranty fund is less than two fifths of the capital, the company shall make no further contract of guaranty or insurance until the fund is made good.

Liable to taxation as insurance companies.

SECTION 64. Any company organized under the authority of chapter one hundred and eighty of the acts of the year eighteen hundred and eighty-four shall be subject to the provisions of the two preceding sections, and such company and all corporations established as herein authorized shall be taxable like domestic insurance companies.

Corporations which have been formed under the provisions of chapter one hundred and eighty of the acts of the year eighteen hundred and eighty-four, or of section sixty-two of chapter two hundred and fourteen of the acts of the year eighteen hundred and eighty-seven, and corporations which may hereafter be formed under the provisions of this chapter, may examine titles and furnish information in relation to both personal property and real estate, and may insure owners of both personal property and real estate, and others interested therein, against loss by reason of incumbrances and defective titles.

LIFE INSURANCE AND LIFE INSURANCE COMPANIES.

[See chap. 229, Acts of 1899, page 71.]

What to be deemed life insurance companies. Prohibitions. P. S. 119, § 154.

SECTION 65. All corporations, associations, partnerships or individuals doing business in this Commonwealth under any charter, compact, agreement, or statute of this or any other state, except as provided in section three, involving the payment of money or other thing of value to families or representatives of policy and certificate holders or members, conditioned upon the continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of endowments or annuities, shall be deemed to be life insurance companies, and shall not make any such insurance, guaranty, contract or pledge in this Commonwealth, or to or with any citizen or resident thereof, which does not distinctly state the amount of benefits payable, the manner of payment and the consideration therefor, nor the performance of which is contingent upon the payment of assessments made upon survivors.

Companies to cease business after notice. P. S. 119, § 155. Penalty. See § 104.

SECTION 66. No life insurance company, after notice as provided in sections seven and nine, shall issue new policies under its authority to do business in the Commonwealth until its funds have become equal to its liabilities and it has complied with the laws as provided in said sections, and has obtained a certificate to that effect, with license to resume business, from the insurance commissioner.

Admission of foreign life companies.

SECTION 67. A company organized under the laws of any other of the United States for the transaction of life insurance may be admitted to do business in this Commonwealth, provided it has the requisite funds of a life insurance company and in the opinion of the commissioner is in sound financial condition and has policies in force upon not less than one thousand lives for an aggregate amount of not less than one million dollars. Any such company organized under the laws of a state or government other than one of the United States, in addition to the above requirements, must have and keep on deposit or in the hands of trustees, as provided in sections seventy-nine and eighty-one, in exclusive trust for the security of its contracts with policy-holders in the United States, funds of an amount equal to the net value of all its policies in the United States and not less than two hundred thousand dollars.

Favoritism in insurance contracts prohibited.

SECTION 68. No life insurance company doing business in Massachusetts shall make or permit any distinction or discrimination in favor of individuals between insurants of the same class and equal expectation of life in the amount or payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes; nor shall any such company or any agent thereof make any contract of insurance, or agreement as to such contract, other than as plainly expressed in the policy issued thereon; nor shall any such company or agent pay or allow, or offer to pay or allow as inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefit to accrue thereon, or any valuable consideration or inducement whatever not specified in the policy contract of insurance.

Colored discrimination forbidden. 1884, c. 235. Penalty. See § 109.

SECTION 69. No life insurance company shall make any distinction or discrimination between white persons and colored persons wholly or partially of African descent, as to the premiums or rates charged for policies upon the lives of such persons; nor shall any such company demand or require greater premiums from such colored persons than are at that time required by such company from white persons of the same age, sex, general condition of health, and prospect of longevity, nor shall any such company make or require any rebate, diminution, or discount upon the amount to be paid on such policy in case of the death of such colored person insured, nor insert in the policy any condition, nor make any stipulation whereby such person insured shall bind himself or his heirs, executors, administrators and assigns to accept any sum less than the full value or amount of such policy in case of a claim accruing thereon by reason of the death of such person insured, other than such as are imposed upon white persons in similar cases; and any such stipulation or condition so made or inserted shall be void.

Any such company which shall refuse the application of any such colored person for insurance upon such person's life shall furnish such person, on his request therefor, with the certificate of some regular examining physician of such company who made the examination, stating that such refusal was not because such applicant is a person of color, but solely upon such

grounds of the general health and prospect of longevity of such person as would be applicable to white persons of the same age and sex.

Surplus account in annual statement.

SECTION 70. Every life insurance company doing business in Massachusetts shall report in its annual statement the amount of forfeitures and undivided surplus on lapsed or terminated policies which it holds for or which is to accrue to the benefit of any class of its policy-holders, whether or not dividends thereof have been declared or allotment made, and whether or not liable for obligations of the company until distribution thereof is made; also the amount of surplus, not ordered to be distributed and not included in the annual statement as dividends due to policy-holders, and not appropriated to the permanent safety fund under the provisions of section seventy-five, accrued from and contributed by its policies in force.

Valuation of policies. Payment for. 1894, c. 19.

SECTION 71. Every life insurance company doing business in this Commonwealth shall annually pay into the treasury of the same, by the way of compensation for the valuation of its policies, two and one-half mills on every thousand dollars insured by it on lives.

Reinsurance by domestic life companies. P. S. 119, § 152.

SECTION 72. No domestic life insurance company shall reinsure its risks except by permission of the insurance commissioner; but may reinsure not exceeding one-half of any individual risk.

1895, c. 366.

No life insurance company organized under the laws of or doing business in this Commonwealth shall enter into any contract of insurance upon lives within this Commonwealth without having previously made or caused to be made a prescribed medical examination of the insured by a registered medical practitioner. Any insurance company violating this provision, or any officer, agent or other person soliciting or effecting, or attempting to effect, a contract of insurance contrary thereto, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars for each offence.

Guaranty capital; dividends; redemption. P. S. 119, § 145.

The stockholders of the guaranty capital of any such company shall be entitled to such annual dividends not exceeding eight per cent., payable from the net surplus, as may have been agreed upon in the subscription thereof. Any such company may redeem its guaranty capital by appropriation of net surplus for that purpose whenever its members so vote.

Rights of creditor and of beneficiary. P. S. 119, § 167. 1892, c. 372. 1893, c. 434. 1894, c. 228.

SECTION 73. When a policy of insurance is effected by any person on his own life, or on another life in favor of some person other than himself having an insurable interest therein, the lawful beneficiary thereof, other than himself or his legal representatives, shall be entitled to its proceeds, against the creditors and representatives of the person effecting the same; and the person to whom a policy of life insurance, hereafter issued, is made payable may maintain an action thereon in his own name: *provided*, that, subject to the statute of limitation, the amount of any premiums for said insurance paid in fraud of creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy; but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless, before such payment, the company shall have written notice by or in behalf of some creditor, with specification of the amount claimed, claiming to recover for certain premiums paid in fraud of creditors.

1894, c. 120.

Every policy of life insurance made payable to or for the benefit of a married woman, or after its issue assigned, transferred, or in any way made payable to a married woman, or to any person in trust for her or for her benefit, whether procured by herself, her husband or by any other person, and whether the assignment or transfer is made by her husband or by any other person, shall inure to her separate use and benefit, and to that of her children, subject to the provisions of this section relating to premiums paid in fraud of creditors; and *provided, further*, that all such policies may be surrendered in the manner provided by section seventy-six of this act, which section shall apply to the same.

Policies to be valid, provided.

In any claim arising under a policy which has been issued in this Commonwealth by any life insurance company, without previous medical examination, or without the knowledge and consent of the insured, or, in case said insured is a minor, without the consent of the parent, guardian or other person having legal custody of said minor, the statements made in the application as to the age, physical condition, and family history of the insured shall be held to be valid and binding upon the company: *provided, however*, that the company shall not be debarred from proving as a defence to such claim that said statements were wilfully false, fraudulent or misleading; and

provided, further, that every policy which contains a reference to the application of the insured, either as a part of the policy or as having any bearing thereon, must have attached thereto a correct copy of the application, and unless so attached the same shall not be considered a part of the policy or received in evidence. Each application for such policy shall have printed upon it in large bold-faced type the following words: "Under the laws of Massachusetts, each applicant for a policy of insurance to be issued hereunder is entitled to be furnished with a copy of this application attached to any policy issued thereon."

Applicants to be furnished with copy of application.

Any solicitor, agent, examining physician or other person who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for insurance, or who shall make any such statement for the purpose of obtaining any fee, commission, money or benefit in any corporation transacting business under this act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, at the discretion of the court; and any person who shall wilfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a policy or certificate holder in any such corporation, for the purpose of procuring payment of a benefit named in the certificate of such holder, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of the Commonwealth in relation to the crime of perjury.

Penalty for misstatement.

After the first day of October in the year eighteen hundred and ninety-four no life insurance company transacting business under this act shall issue any policy to a resident of this Commonwealth which does not bear in bold letters upon its face a plain description of the policy, so fully defining its character, including dividend periods and other peculiarities, that the holder thereof shall not be liable to mistake the nature or scope of the contract.

Policies to be described on face. 1894, c. 442.

Rights of Policy Holders in Domestic Mutual Life Companies.

Section 74. Every person insured by a domestic mutual life insurance company shall be a member, entitled to one vote, and one vote additional for each five thousand dollars of insur-

Policy-holders are members. Shall have notice of annual meetings.

ance in excess of the first five thousand dollars, and shall be notified of its annual meetings by written notice or by an imprint in the form prescribed in section forty, upon the back of each policy, receipt or certificate of renewal.

Votes and proxies. P. S. 119, § 153. Penalty. See § 107.

Members may vote by proxies dated and executed within three months, and returned and recorded on the books of the company seven days or more before the meeting at which they are to be used; but no person shall be allowed as proxy or otherwise to cast more than twenty votes, and no officer shall himself, or by another, ask for, receive, procure to be obtained, or use, a proxy vote.

Distribution of surplus. P. S. 119, §§ 147-150.

SECTION 75. Every such domestic life company shall annually, or once in every two, three, four or five years, as it shall determine, and as may be conditioned in its policies, make distribution of all surplus it may have accumulated since its last dividend or surplus. By such surplus is here intended all accumulations since its last distribution of surplus above its debts and reserve computed as provided in section eleven. The distribution shall be upon what is known as the contribution plan, and each member upon whose policy no premium is overdue and unpaid shall be entitled to the amount contributed by his policy to such surplus. Policies which have become payable before the time when such distribution is made, and after the date of the last previous distribution, shall share in the same equitably and proportionally: *provided*, that, besides the aggregate market value margin in excess of par of all bonds held by a company, and not included in its reserve, any such company may accumulate from its surplus and hold as a safety fund an amount not larger than ten per cent. of its required legal reserve. Such safety fund, or any part thereof, may be applied to supply any deficiency in the reserve caused by depreciation of assets or losses and expenses beyond the ability of the company to otherwise provide for. Upon the termination, by reason of death or maturity, of any policy hereafter issued upon which there has been no default in payment of premium, the amount payable thereon shall include, as a special distribution of surplus, such portion of the company's safety fund, if any, as may be determined by the following rule, viz.: If the company's surplus as shown by the last report of the insurance company, as made to the insurance commissioner, prior to the termination of the said policy, was a greater

Safety fund.

amount than was shown by the first report of the insurance company after the policy was issued, it shall be ascertained what percentage the net increase in surplus during that time is on the company's total distributions during the same interval, and the same percentage of the sum of all the distributions already paid on said policy shall constitute the special dividend.

Non-forfeiture of policies. Paid-up and cash surrender values. P. S. 119, §§ 159-165.

SECTION 76. All policies hitherto issued by any domestic life insurance company shall be subject to the provisions of law applicable and in force at the date of such issue. No policy of life or endowment insurance hereafter issued by any such company shall become forfeit or void for non-payment of premium after two full annual premiums, in cash or note, or both, have been paid thereon; but in case of default in the payment of any subsequent premium, then, without any further stipulation or act, such policy shall be binding upon the company for the amount of paid-up insurance which the then net value of the policy and all dividend additions thereon, computed by the rule of section eleven, less any indebtedness to the company on account of said policy, and less the surrender charge provided herein, will purchase as a net single premium for life or endowment insurance maturing or terminating at the time and in the manner provided in the original policy contract; and such default shall not change or affect the conditions or terms of the policy, except as regards the payment of premiums and the amount payable thereon. Said surrender charge shall be eight per cent. of the insurance value of the policy at the date of default, which insurance value is the present value of all the normal future yearly costs of insurance, which by its terms said policy is exposed to pay in case of its continuance, computed upon the rate of mortality and interest assumed in section eleven. Every such policy, after the payment of two full annual premiums thereon, or when by its terms it has become paid up, shall have a surrender value which shall be its net value, less the surrender charge, and less any indebtedness to the company on account of the said policy, and its holder may, upon any subsequent anniversary of its issue, surrender the same and claim and recover from the company such surrender value in cash. On policies of prudential or industrial insurance on which the weekly premiums are not more than fifty cents each, the surrender value in all cases shall be payable in cash. Upon surrender, on any anniversary of its issue, of a

Every policy to have a surrender value.

1896, c. 470.

Policy-holder to be paid in cash. 1894, c. 470.

policy which has become paid up after the payment of two full annual premiums, by force of the statute, upon default in payment of premium, the holder shall be entitled to its net value, payable in cash. But no surrender of a policy shall be made without the written assent of the person to whom the policy is made payable. Any condition or stipulation in the policy or elsewhere, contrary to the provisions of this section, and any waiver of such provisions by the insured, shall be void.

FOREIGN INSURANCE COMPANIES.

Foreign companies may be admitted to do business by resident agents, subject to laws. Agents. See §§ 91, 92.

SECTION 77. Foreign insurance companies, upon complying with the conditions herein set forth applicable to such companies, may be admitted to transact in this Commonwealth by constituted agents resident therein any class of insurance authorized by the laws of the Commonwealth, subject to all general laws now or hereafter in force relative to the duties, obligations, prohibitions and penalties of insurance companies, and subject to all laws applicable to the transaction of such business by foreign insurance companies and their agents: *provided*, that no provision of law which by its terms applies specifically to domestic life insurance companies shall thereby become applicable to foreign life insurance companies.

Foreign life companies. See § 67.

Conditions of Admission of Foreign Companies.

Before admission any such company must—

SECTION 78. No foreign insurance company shall be so admitted and authorized to do business until—

Deposit copy of charter and statement of condition, and pay fees therefor. R. L. P. S. 119, §§ 190, 202.

First, It shall deposit with the insurance commissioner a certified copy of its charter or deed of settlement and a statement of its financial condition and business, in such form and detail as he may require, signed and sworn to by its president and secretary or other proper officer, and shall pay for the filing of such copy the sum of thirty dollars, and for the filing of such statement the sum of twenty dollars.

Satisfy the commissioner that it is legally organized with sufficient capital or funds.

Second, It shall satisfy the insurance commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact; that it has, if a stock company, a fully paid-up and unimpaired capital, exclusive of stockholders' obligations of any description, of an amount not less than is required of similar companies formed under the provisions of this act, and, if a mutual company, other than life, that it has net cash assets equal to the capital

If mutual company, must have cash assets in

required of like companies on the stock plan; or that it possesses net cash assets of not less than one hundred thousand dollars or net cash assets of not less than fifty thousand dollars, with also invested assets of not less than one hundred thousand dollars and, in each case, with additional contingent assets of not less than three hundred thousand dollars, and that such capital or net assets are well invested and immediately available for the payment of losses in this Commonwealth; and that it insures on any single hazard a sum no larger than one tenth of its net assets.

addition to contingent assets. 1896, c. 270.

Third, It shall by a duly executed instrument filed in his office constitute and appoint the insurance commissioner or his successor its true and lawful attorney, upon whom all lawful processes in any action or legal proceeding against it may be served, and therein shall agree that any lawful process against it which may be served upon its said attorney shall be of the same force and validity as if served on the company, and that the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this Commonwealth. The service of such process shall be made by leaving the same in the hands or office of the commissioner. Copies of such instrument certified by the commissioner shall be deemed sufficient evidence thereof, and service upon such attorney shall be deemed sufficient service upon the principal.

Appoint the commissioner its attorney to accept service of lawful process. See § 14.

Fourth, It shall appoint as its agent or agents in the Commonwealth some resident or residents thereof.

Constitute an agent or agents in the Commonwealth.

Fifth, It shall obtain from the insurance commissioner a certificate that it has complied with the laws of the Commonwealth and is authorized to make contracts of insurance.

Obtain a certificate of authority to do business.

[See additional requirement, chap. 537, Acts of 1898, p. 69.]

SECTION 79. Such foreign company, if incorporated or associated under the laws of any government or state other than the United States or one of the United States, shall not be admitted until, besides complying with the conditions of section seventy-eight, it has made a deposit with the treasurer of the Commonwealth or with the financial officer of some other state of the United States, of a sum not less than the capital required of like companies under this act. Such deposit must be in exclusive trust for the benefit and security of all the company's policy-holders and creditors in the United States, and may be

Company of a foreign country must also make deposit, which shall be deemed its capital. P. S. 119, § 218.

made in the securities but subject to the limitations specified in section thirty-four of this act, and such deposit shall be deemed for all purposes of the insurance laws the capital of the company making it.

Shall transact but one class of insurance. P. S. 119, § 201.

SECTION 80. No foreign insurance company hereafter admitted to do business in the Commonwealth shall be authorized to transact more than one class or kind of insurance therein. But any company, domestic or foreign, engaged in this Commonwealth in the sole business of life insurance may, in connection therewith, also engage in the business of insuring against bodily injury or death by accident, by increasing its capital to the amount now required of two separate companies engaged in either one of these two classes of business; and no company now or hereafter admitted shall be allowed to transact both of said classes of business unless it possesses an aggregate capital equal to that required of two separate companies engaged in either one of these classes of business: *provided, however*, that a company authorized to transact within this Commonwealth the business of steam boiler insurance or the business authorized under the eighth paragraph of section twenty-nine of this act may also be permitted to transact the business authorized under the seventh paragraph of said section.

Two kinds of business. 1895, c. 474.

[Duly organized corporations of any other state authorized to transact the business of burglary insurance may be admitted to transact such business in this Commonwealth, upon the conditions required under chapter seventy-seven of the acts of the year eighteen hundred and ninety-four.] Chap. 124, Acts of 1896.

Funds held by trustees of company of foreign country, together with its deposits, to constitute its assets. P. S. 119, §§ 219, 220.

Appointment of trustees; commissioner may examine assets.

SECTION 81. Any admitted company of a foreign country may appoint trustees who are citizens of the United States and approved by the insurance commissioner, to hold funds in trust for the benefit of its policy-holders and creditors in the United States. Said trustees shall be named by the directors of the company and a certified copy of the record of the appointment of such trustees and of the deed of trust shall be filed in the office of the insurance commissioner, who may examine such trustees and the assets in trust and all books and papers relating thereto in the same manner that he may examine the officers, agents, assets and affairs of insurance companies. The funds so held by such trustees, so far as the same are in securities, money or credits admissible as sound assets in the

financial accounts of insurance companies, shall, together with its deposits made in accordance with section seventy-nine, constitute the assets of such company as regards its policy-holders and creditors in the United States.

Authority to do business may be revoked for violation of law, etc. See § 7.

SECTION 82. The authority of a foreign insurance company may be revoked if it shall violate or neglect to comply with any provision of law obligatory upon it, and whenever in the opinion of the insurance commissioner its condition is unsound, or its assets above its liabilities, exclusive of capital and inclusive of unearned premiums estimated as provided in section eleven, are less than the amount of its original capital or required unimpaired funds.

Fire Insurance in Unauthorized Companies.

Conditions under which unauthorized companies may lawfully insure property. 1885, c. 300. Penalty. See § 99. 1898, c. 380.

SECTION 83. The insurance commissioner, upon the annual payment of a fee of twenty dollars, may issue licenses to citizens of this Commonwealth, subject to revocation at any time, permitting the person named therein to procure policies of fire or bombardment insurance on property in this Commonwealth in foreign insurance companies not authorized to transact business in this Commonwealth. Before the person named in such a license shall procure any insurance in such companies on any property in this Commonwealth he shall in every case execute and file with the insurance commissioner an affidavit that he is unable to procure, in companies admitted to do business in the Commonwealth, the amount of insurance necessary to protect said property, and shall only procure insurance under such license after he has procured insurance in companies admitted to do business in this Commonwealth to the full amount which said companies are willing to write on said property: *provided*, that such licensed person shall not be required to offer any portion of such insurance to any company which is not possessed of cash assets amounting to at least twenty-five thousand dollars, or one which has, within the preceding twelve months, been in an impaired condition. Each person so licensed shall keep a separate account of the business done under the license, a certified copy of which account he shall forthwith file with the insurance commissioner, showing the exact amount of such insurance placed for any person, firm or corporation, the gross premium charged thereon, the companies in which the same is placed, the date of the policies and the term thereof, and also

Not required to offer insurance in certain companies. 1894, c. 147.

a report in the same detail of all such policies cancelled, and the gross return premiums thereon, and before receiving such license shall execute and deliver to the treasurer and receiver-general of the Commonwealth a bond in the penal sum of two thousand dollars, with such sureties as the treasurer and receiver-general shall approve, with a condition that the licensee will faithfully comply with all the requirements of this section, and will file with the treasurer and receiver-general, in January of each year, a sworn statement of the gross premiums charged for insurance procured or placed and the gross returned premiums on such insurance cancelled under such license during the year ending on the thirty-first day of December next preceding, and at the time of filing such statement will pay into the treasury of the Commonwealth a sum equal to four per cent. of such gross premiums, less such returned premiums so reported.

Miscellaneous Provisions.

Foreign companies to do business by agents in the state.

Policies not to be invalidated by war. P. S. 119, § 218.

Not to reinsure in unauthorized companies. See §§ 20, 102. 1898, c. 537.

Tax to be paid by insuring company. 1888, c. 154.

SECTION 84. Foreign companies admitted to do business in the Commonwealth shall make contracts of insurance upon lives, property or interests therein, only by lawfully constituted and licensed resident agents. No policy of insurance issued to a citizen of the Commonwealth by an authorized company organized under the laws of a foreign country shall be invalidated by the occurrence of hostilities between such foreign country and the United States. And no company shall directly or indirectly contract for or effect reinsurance of any risk in Massachusetts with any company not authorized to do business therein, except as may be hereafter provided by law.

Whenever any company negotiating insurance effects a reinsurance of any part thereof, otherwise than through licensed resident agents, the entire tax thereon shall be paid by the original insuring company and the tax commissioner shall make no deduction on account of such reinsurance.

Reciprocal Obligations.

Same conditions imposed upon companies of other states as such states impose on domestic companies. P. S. 119, § 215. See § 111.

SECTION 85. When by the laws of any other state any taxes, fines, penalties, licenses, fees, deposits or other obligations or prohibitions, additional to or in excess of those imposed by the laws of this Commonwealth upon foreign insurance companies and their agents, are imposed on insurance companies of this Commonwealth and their agents doing business in such state,

the same taxes, fines, etc., shall be imposed upon all insurance companies of such state and their agents doing business in this Commonwealth so long as such laws remain in force.

LLOYDS' ASSOCIATIONS.

How qualified for admission. P. S. 119, §176.

SECTION 86. Associations of individuals, citizens of the United States, whether organized within the Commonwealth or elsewhere within the United States, formed upon the plan known as Lloyds — whereby each associate underwriter becomes liable for a proportionate part of the whole amount insured by a policy — may be authorized to transact insurance other than life in this Commonwealth, in like manner and upon the same terms and conditions as are required of and imposed upon insurance companies of other of the United States.

AGENTS AND BROKERS.

Who deemed to be agents. P. S. 119, §§ 183, 184.

SECTION 87. Any person not a duly licensed insurance broker, who solicits insurance on behalf of any insurance company, or transmits for a person other than himself an application for or a policy of insurance to or from such company, or offers or assumes to act in the negotiation of such insurance, shall be deemed an insurance agent within the intent of this act, and shall thereby become liable to all the duties, requisitions, liabilities and penalties to which an agent of such company is subject.

Agents of domestic companies.

SECTION 88. Any officer of, or person appointed as its agent for that purpose by a domestic insurance company, or acting without compensation, may, without other qualification, act in the negotiation and transaction with such company of any insurance which such company may lawfully do.

Liability of agents on contracts unlawfully made. P. S. 119, § 210.

SECTION 89. An insurance agent shall be personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for or in behalf of any company not authorized to do business in the Commonwealth.

Company bound by payment of premium to agent or broker. P. S. 119, § 194.

SECTION 90. An insurance agent or broker who acts for a person other than himself in negotiating a contract of insurance by an insurance company shall, for the purpose of receiving the premium therefor, be held to be the company's agent, whatever conditions or stipulations may be contained in the policy or contract; such agent or broker knowingly procuring by fraudulent representations payment, or an obligation for the payment,

Penalty on agent for fraudulent representations. P. S. 119, § 185.

of a premium of insurance, shall be punished by fine of not less than one hundred nor more than one thousand dollars, or by imprisonment for not more than one year.

Agents of Foreign Companies.

Agents of foreign companies not to act without license. P. S. 119, § 209. Penalty. See § 98.

SECTION 91. No officer or agent of a foreign insurance company shall make or procure to be made, or act or aid in any manner in the negotiation of, any insurance with such company until he shall procure from the insurance commissioner a certificate of authority so to do, which shall state in substance that the company is authorized to do business in the Commonwealth, and that the person named therein is the constituted agent of the company for the transaction of such business.

Appointment and certificate of agent.

Upon written notice by such company of its appointment of a suitable person to act as its agent within the Commonwealth, and the payment of a fee of two dollars, the insurance commissioner shall, if the facts warrant it, grant such certificate. Such certificate shall continue in force until the first day of April next after its issue, and, by renewal thereof on the annual payment for such renewal of a fee of two dollars before the first day of April of each year, until revoked by the commissioner for non-compliance with the laws or until the appointment of the agent is revoked by written notice from the company to that effect, filed with the insurance commissioner.

Company bound by acts of its agent.

While such certificate remains in force the company shall be bound by the acts of the person named therein within his apparent authority as its acknowledged agent.

Agent to exhibit on sign, cards, etc., the state or country, etc., of the company he acts for. P. S. 119, § 205.

SECTION 92. Every person acting for a foreign insurance company shall exhibit in conspicuous letters, on the sign designating his place of business, the name of the state or country under whose authority the company he represents has been incorporated or formed. And said company and agent shall also have printed in large type the name of such state or country and the kind of office, whether chartered or formed as a mutual or stock company, upon all policies issued to citizens of this Commonwealth, on all cards, placards and pamphlets, and in all advertisements published, issued or circulated in this Commonwealth by them or him, relating to the business of such company.

Certain agents to make returns. 1897, c. 483.

Every agent of a foreign insurance company shall, on or before the fifteenth day of November in each year, make return

to the tax commissioner of all business transacted by him as such agent during the year ending with the thirty-first day of October then next preceding, in such form as the tax commissioner may prescribe; and all books, papers and accounts of his agency shall be open to the inspection of the tax commissioner at any time whenever he may deem it proper to verify the statements and transactions aforesaid. If such agent neglects or refuses to make such return, or refuses to submit the books, papers and accounts of his agency to such inspection, the tax commissioner shall report such neglect or refusal to the insurance commissioner, who shall thereupon cancel the certificate of authority to such agent and make publication thereof, in such manner as the commissioner shall deem necessary, and the certificate so cancelled shall not be renewed within one year thereafter; but only such agents shall be subject to this provision as are not accountable to any other agent in the Commonwealth for premiums received.

Commissioner to cancel license. 1896, c. 402.

Insurance Brokers.

SECTION 93. Whoever, for compensation, acts or aids in any manner in negotiating contracts of insurance or reinsurance or placing risks or effecting insurance or reinsurance for a person other than himself, and not being the appointed agent or officer of the company in which such insurance or reinsurance is effected, shall be deemed an insurance broker, and no person shall act as such broker save as provided in this section.

Who is an insurance broker. Not to act without license. 1869, c. 93. P. S. 119, §§ 186, 187. Penalty. See § 98.

The insurance commissioner may, upon the payment of a fee of ten dollars, issue to any suitable person, a resident of this Commonwealth or a resident of any other state granting licenses to residents of this Commonwealth, a certificate of authority to act as an insurance broker to negotiate contracts of insurance or reinsurance or place risks or effect insurance or reinsurance with any qualified domestic insurance company or its agents, and with the authorized agents in the Commonwealth of any foreign insurance company duly admitted to do business in the Commonwealth.

Commissioner may license broker. 1895, c. 50. 1896, c. 448. Fee for certificate.

Such certificate shall remain in force for one year unless revoked by the commissioner for cause. Such cause shall exist upon conviction of the holder of such certificate of a violation of the insurance laws, and whenever it shall appear to the commissioner upon due proof after notice that the holder has

Revocation of license if holder violates the law, or neglects to pay over premiums.

unreasonably failed and neglected to pay over to the company or agent entitled thereto any premium or part thereof collected by him on any policy of insurance. The commissioner shall publish such revocation in such manner as he deems for the protection of the public.

1895, c. 150. The insurance commissioner may issue a certificate of authority to act as an insurance broker, without the payment of any fee therefor, to any soldier or sailor resident in this Commonwealth who served in the army or navy during the war of the rebellion and who received an honorable discharge from such service, upon satisfactory evidence of the identity of such soldier or sailor.

DEPOSITS WITH THE STATE TREASURER.

[See also 1893, chap. 294.]

Treasurer to hold deposits of insurance companies. P. S. 119, §§ 156, 215, 218. 1883, c. 107. 1884, c. 119.

SECTION 94. The treasurer of the Commonwealth in his official capacity shall take and hold in trust deposits made by any domestic insurance company for the purpose of complying with the laws of any other state to enable such company to do business in such state; and shall also in like manner take and hold any deposit made by a foreign insurance company under any law of the Commonwealth. The company making such deposit shall be entitled to the income thereof, and may from time to time with the consent of the treasurer, when not forbidden by the law under which the deposit is made, change in whole or part the securities which compose the deposit, for other competent securities of equal par value.

Companies entitled to income of deposits and may exchange securities.

Treasurer may return deposits, when.

Upon request of any domestic insurance company the said treasurer may return to such company the whole or any portion of the securities of such company held by him on deposit, when he shall be satisfied that the securities so asked to be returned are subject to no liability and not required to be longer held by any provision of law or purpose of the original deposit. And he may return to the trustees or other representative authorized for that purpose of a foreign insurance company, any deposit made by such company when it shall appear that such company has ceased to do business in the Commonwealth and is under no obligation to policy-holders or other persons in the Commonwealth or in the United States, for whose benefit such deposit was made.

Trust in deposit may be enforced in equity suit.

An insurance company which has made such deposit, or its trustees or resident manager in the United States, or the insur-

ance commissioner, or any creditor of such company, may at any time bring, in the supreme judicial court for the county of Suffolk, a suit in equity against the Commonwealth and other parties properly joined therein, to enforce, administer or terminate the trust created by such deposit. The process in such suit shall be served on the treasurer of the Commonwealth, who shall appear and answer in its behalf and perform such orders and decrees as the court may make thereupon.

Treasurer to answer for Commonwealth and perform decrees of court.

RECEIVERS OF INSURANCE COMPANIES.

SECTION 95. The compensation of receivers of insolvent insurance companies shall be fixed by the supreme judicial court. All accounts rendered to the court by such receivers shall be referred to the insurance commissioner for his examination and report thereon.

Compensation. P. S. 119, §§ 168–172. 1883, c. 258. Accounts.

Such receivers, at the expiration of one year from final settlement ordered by the court, or, if they then have in their hands for distribution or deposit moneys or dividends uncalled for, when the same shall be paid into the treasury of the Commonwealth as provided in chapter two hundred and fifty-eight of the acts of the year eighteen hundred and eighty-three, and their final account allowed by the court, shall deposit with the insurance commissioner, together with all papers and records relating to their receiverships, all books and papers of such insolvent companies.

Deposit of books with commissioner.

ANNUAL STATEMENTS.

SECTION 96. Every insurance company shall annually, on or before the fifteenth day of January, file in the office of the insurance commissioner, a statement which shall exhibit its financial condition on the thirty-first day of December of the previous year, and its business of that year. For good cause shown the commissioner may extend the time within which any such statement may be filed, but not to a date later than the fifteenth day of February.

All companies to make annual statements. P. S. 119, §§ 226, 230. 1884, c. 217. Penalty. See § 101. 163 Mass. 276.

Every such annual statement shall be in the form and of the specifications the insurance commissioner may require, who shall embody therein, so far as appropriate to the several companies, the substance of the appended forms, together with any additional inquiries he may consider fit in order to elicit a complete and accurate exhibit of the conditions and transactions of the companies. The assets and liabilities shall be computed and

Form of statement. How verified. Penalty for neglect and false statement. See § 101.

allowed in such statement in accordance with the rules stated in section eleven. Such statement shall be subscribed and sworn to by the president and secretary, or, in their absence, by two of its principal officers.

By companies of foreign countries.

The annual statement of a company of a foreign country shall embrace only its business and condition in the United States, and shall be subscribed and sworn to by its resident manager or principal representative in charge of its American business.

Fee for filing.

For filing each annual statement each foreign company shall pay to the Commonwealth the sum of twenty dollars.

New business after default unlawful.

The transaction of any new business by any company or its agents after neglect to file a statement in the manner herein provided shall be unlawful.

PENALTIES, FORFEITURES, ETC.

Complainant in certain cases entitled to one half of fine. P. S. 119, § 182.

SECTION 97. The person, if other than the insurance commissioner or his deputy, upon whose complaint a conviction is had for violation of the law prohibiting insurance in or by foreign companies not authorized to do business in the Commonwealth, shall be entitled to one half of the fine recovered upon sentence therefor.

Negotiation of unlawful contracts. Agents and brokers. See §§ 3, 91.

SECTION 98. Any person who shall assume to act as an insurance agent or insurance broker without license therefor as herein provided, or who shall act in any manner in the negotiation or transaction of unlawful insurance with a foreign insurance company not admitted to do business in this Commonwealth, or who as principal or agent shall violate any provision of this act in regard to the negotiation or effecting of contracts of insurance, shall be punished by fine of not less than one hundred nor more than five hundred dollars for each offence.

Unlawful acts of licensed persons. See § 83.

SECTION 99. Any person licensed under the provisions of section eighty-three, who shall procure or act in any manner in the procurement or negotiation of insurance in any unauthorized foreign company, and shall neglect to make and file the affidavit and statements as such section provides, or shall wilfully make a false affidavit or statement, shall forfeit his license and be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for not more than one year or by both.

Illegal advertisements. See § 18.

SECTION 100. Any company or any agent thereof issuing or circulating advertisements in violation of section eighteen shall be punished by fine of not less than fifty nor more than five hundred dollars.

Neglect to make returns.

SECTION 101. Any company that neglects to make and file its annual statement in the form and within the time provided by section ninety-six shall forfeit one hundred dollars for each day's neglect, and upon notice by the insurance commissioner to that effect its authority to do new business shall cease while such default continues. For wilfully making a false annual or other statement it is required by law to make, an insurance company and the persons making oath to or subscribing the same shall severally be punished by fine of not less than five hundred nor more than five thousand dollars. Any person making oath to such false statement shall be deemed guilty of the crime of perjury.

False returns. See §§ 19, 98.

Reinsurance in unauthorized companies. See § 20.

SECTION 102. For making any reinsurance in violation of section twenty an insurance company and the agent effecting or acting in the negotiation of such reinsurance shall severally be punished by fine of five hundred dollars.

Over-insurance. See §§ 20, 86.

SECTION 103. Any insurance company that shall insure upon a single risk a larger amount than the law permits, shall be punished by fine of five hundred dollars.

Issue of life policy after notice of impairment. See § 66.

SECTION 104. Any officer or agent of a life insurance company who shall issue a new policy, after notice by the commissioner, in violation of section sixty-six, shall for each offence forfeit a sum not exceeding one thousand dollars.

Issue of fire policy other than standard form. See § 60.

SECTION 105. Any insurance company or agent who shall make, issue or deliver a policy of fire insurance in wilful violation of section sixty shall forfeit for each offence not less than fifty nor more than two hundred dollars; but such policy shall nevertheless be binding upon the company issuing the same.

Unlawful guarantee to policy-holder. See § 50.

SECTION 106. Any director or other officer of a mutual fire insurance company who either officially or privately gives a guarantee to a policy-holder thereof against an assessment to which such policy-holder would otherwise be liable shall be punished by fine not exceeding one hundred dollars for each offence.

Proxy vote by officer or agent. See §§ 40, 74.

SECTION 107. Any paid officer or agent of a domestic mutual insurance company who shall ask for, receive, procure to be obtained or use a proxy vote in violation of section forty or

section seventy-four shall be punished for each offence by a fine of not less than one hundred nor more than three hundred dollars.

Obstruction of commissioner in examinations. Witness in default. See § 6.

SECTION 108. Whoever, without justifiable cause, neglects upon due summons to appear and testify before the commissioner as provided in section six, and whoever obstructs the commissioner, his deputy or examiner, in his examination of an insurance company, shall be punished by fine of not more than one thousand dollars or by imprisonment for not more than one year.

Color discrimination. See § 69.

SECTION 109. Any life company or officer or agent thereof violating any of the provisions of section sixty-nine shall be punished by fine of not more than one hundred dollars for each offence.

Other violations.

SECTION 110. For violation of any provision of this act the penalty whereof is not specifically provided for herein, the offender shall be punished by fine of not more than five hundred dollars.

Enforcement of reciprocal obligations.

SECTION 111. Compliance with the provisions of section eighty-five as to deposits, obligations and prohibitions, and the payment of taxes, fines, fees and penalties by and upon foreign insurance companies, may be enforced in the ordinary course of equity procedure by information brought in the supreme judicial court by the attorney-general at the relation of the insurance commissioner.

Agent or broker, when to be deemed to be guilty of larceny. P. S. c. 203, § 47.

An insurance agent or broker who acts in negotiating a contract of insurance by an insurance company lawfully doing business in this Commonwealth, and who embezzles or fraudulently converts to his own use, or with intent to use or embezzle, takes, secretes or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests or otherwise uses or applies any money or substitute for money received by him as such agent or broker, contrary to the instructions or without the consent of the company for or on account of which the same was received by him, shall be deemed guilty of simple larceny.

Repeal, effect of.

SECTION 112. The provisions of this act, so far as they are the same as those of existing laws, shall be construed as a continuation of such laws and not as new enactments; and the repeal by this act of any provision of law shall not affect any act done, liability incurred or any right accrued and established, or any suit or prosecution, civil or criminal, pending or

to be instituted to enforce any right or penalty or punish any offence under the authority of the repealed laws; and any person who at the time when said repeal takes effect holds office under any of the laws repealed shall continue to hold such office according to the tenure thereof, unless such office is abolished or a different provision is herein made. All acts and parts of acts inconsistent herewith are hereby repealed.

FORMS.

A.— *Form of Return for Stock Insurance Companies, except Life.*

(1.) State the name of the company. (2.) Where located. (3.) When incorporated and for what period. (4.) Amount of capital. (5.) Amount of capital actually paid in. (6.) Cash value of real estate owned. (7.) Amount loaned on mortgage of real estate. (8.) Amount and description of each kind of bonds and stocks owned, with par and market value. (9.) Amount loaned on collateral; par and market value of each security pledged. (10.) Amount of cash on hand. (11.) Amount of gross premiums in course of collection. (12.) Amount of bills receivable, not matured, taken for premiums. (13.) Amount of all other property or investments. (14.) All outstanding losses. (15.) Amount of unearned premiums on policies in force. (16.) All other liabilities and claims against the company. (17.) Amount of cash received for premiums. (18.) Amount of notes received for premiums. (19.) Amount received for interest and rents. (20.) Amount of income received from all other sources. (21.) Amount paid for losses. (22.) Amount paid for dividends. (23.) Amount paid for expenses. (24.) All other expenditures. (25.) State amount of risks written, terminated and in force, with gross premiums thereon.

B.— *Form of Return of Mutual Companies, except Life.*

(1.) State the name of the company. (2.) Where located. (3.) When incorporated and for what period. (4.) Amount of guarantee fund, if any. (5.) Cash value of real estate owned. (6.) Amount loaned on mortgage of real estate. (7.) Amount and description of each kind of stocks and bonds owned, with par and market value. (8.) Loans on collateral, with par and market value of each security pledged. (9.) Cash in office and in bank. (10.) Gross premiums in course of collection. (11.) All other loans, investments and property. (12.) Premium notes liable to assessment. (13.) Amount of scrip outstanding. (14.) All outstanding losses. (15.) Unearned premiums. (16.) Dividends declared and unpaid. (17.) Borrowed money. (18.) All other liabilities and claims against the company. (19.) Cash received for premiums. (20.) Cash received for interest

and rent. (21.) Premium notes received. (22.) Income from all other sources. (23.) Paid for losses. (24.) Paid for expenses. (25.) Surplus returned to policy-holders. (26.) All other expenditures. (27.) Scrip dividends declared. (28.) State amount of risks written, terminated and in force, with gross premiums thereon.

C. — *Form of Return of Life Insurance Companies.*

(1.) The name of the company. (2.) Where located. (3.) When incorporated and for what period. (4.) Amount of capital stock or guarantee fund. (5.) Cash value of real estate owned. (6.) Amount loaned on mortgages of real estate. (7.) Amount and description of each kind of bonds and stocks owned, with par and market value. (8.) Loans on collateral, with par and market value of each security pledged. (9.) Cash in office and in bank. (10.) Premium notes and loans on policies in force. (11.) Outstanding and deferred premiums on policies in force. (12.) All other loans, investments and property. (13.) All outstanding losses and policy claims. (14.) Dividends of surplus due policy-holders. (15.) Forfeitures and surplus accrued, held for and to be divided to any special class of policy-holders; surplus accrued on policies in force, not yet due to be distributed. (16.) All other liabilities and claims against the company. (17.) Cash received for premiums. (18.) Cash received for interest and rent. (19.) Income from all other sources. (20.) Paid for losses and claims. (21.) Dividends of surplus to policy-holders. (22.) Paid for expenses. (23.) All other expenditures. (24.) Number, date, amount and kind of each outstanding policy not heretofore returned, gross premium thereon, and age of the insured. (25.) Number, date and amount of each policy which has within the year ceased to be in force, how terminated, what has been paid to the legal holder of the policy, and age of the insured. *Approved June 25, 1894.*

[CHAP. 381, ACTS OF 1894.]

An Act relative to the Admission of Certain Foreign Corporations to do Business in this Commonwealth.

Be it enacted, etc., as follows:

Foreign corporations may not transact business not permitted domestic.

SECTION 1. It shall be unlawful for any corporation, association or organization of another state or country, except life insurance companies as provided in chapter two hundred and fourteen of the acts of the year eighteen hundred and eighty-seven, to engage or continue in the Commonwealth in any kind of business the transaction of which by domestic corporations is not permitted by the laws of the Commonwealth. The commissioner of corporations, the insurance commissioner, and any

other officer of the Commonwealth whose duty it is to examine and decide whether a corporation, association or other organization is privileged to file any papers under chapter three hundred and thirty of the acts of the year eighteen hundred and eighty-four, chapter two hundred and fourteen of the acts of the year eighteen hundred and eighty-seven, chapter four hundred and twenty-one of the acts of the year eighteen hundred and ninety, chapter forty of the acts of the year eighteen hundred and ninety-two, or any act in amendment thereof, shall refuse to accept or file the charter, financial statement or other papers, or accept appointment as attorney for service for any corporation, association or other organization doing a business in this Commonwealth, the transaction of which by domestic corporations is not then permitted by the laws of the Commonwealth.

SECTION 2. This act shall take effect upon the first day of January in the year eighteen hundred and ninety-five.

Approved May 12, 1894.

[CHAP. 537, ACTS OF 1898.]

An Act relative to Reinsurance Contracts.

Be it enacted, etc., as follows:

Foreign companies to file declaration relative to reinsurance prior to admission.

SECTION 1. Whenever an application for admission to this Commonwealth is made by a company, whether of another state of the United States or of a foreign country, for the transaction of the business of fire insurance herein, such company shall, as one of the prerequisites of admission, file a sworn declaration, signed by its president and secretary, or officers corresponding thereto, that it will not reinsure any risk or part thereof taken by it on any property located in Massachusetts with any company not authorized to transact the business of fire insurance in said Commonwealth, except as is hereinafter provided. Every fire insurance company now or hereafter admitted, shall annually and at such other times as the insurance commissioner may require, in addition to all returns now by law required of it or its agents or managers, make a return to the insurance commissioner in such form and detail as may be prescribed by him, of all reinsurance contracted for or effected by it, directly or indirectly, upon property located in Massachusetts, such return

To make annually returns of reinsurance effected.

to be certified by the oath of its president and secretary if a company of one of the United States, and, if a company of a foreign country, by its president and secretary, or by officers corresponding thereto, as to reinsurance as aforesaid contracted for or effected through the foreign office, and by the United States manager as to such reinsurance effected by the United States branch; and if any company shall directly or indirectly reinsure any risk taken by it on any property located in Massachusetts in any company not duly authorized to transact business herein, or if it shall refuse or neglect to make the returns required by this act, the insurance commissioner may revoke its authority to transact business in this Commonwealth: *provided, however*, that any company authorized to do business in this Commonwealth may insure and have full authority to reinsure in unauthorized companies any property located in Massachusetts in respect to which an affidavit has been filed within the twelve months next preceding in accordance with the provisions of section eighty-three of chapter five hundred and twenty-two of the acts of the year eighteen hundred and ninety-four, in which case the restrictive provision of section twenty of the same chapter as to the amount which may be insured in a single hazard shall not apply.

Authority may be revoked, etc.

May insure or reinsure affidavit risks.

Sect. 84, c. 522, Acts of 1894, amended.

SECTION 2. Section eighty-four of chapter five hundred and twenty-two of the acts of the year eighteen hundred and ninety-four is hereby amended by striking out in the ninth line, the words "of another state or government", and by inserting after the word "therein", in the twelfth line, the words: — except as may be hereafter provided by law, — so as to read as follows: — *Section 84.* Foreign companies admitted to do business in the Commonwealth shall make contracts of insurance upon lives, property or interests therein, only by lawfully constituted and licensed resident agents. No policy of insurance issued to a citizen of the Commonwealth by an authorized company organized under the laws of a foreign country shall be invalidated by the occurrence of hostilities between such foreign country and the United States. And no company shall directly or indirectly contract for or effect reinsurance of any risk in Massachusetts with any company not authorized to do business therein, except as may be hereafter provided by law.

Whenever any company negotiating insurance effects a reinsurance of any part thereof, otherwise than through licensed

resident agents, the entire tax thereon shall be paid by the original insuring company and the tax commissioner shall make no deduction on account of such reinsurance.

Maximum limit of risk to be retained by a marine company.

SECTION 3. Any insurance company authorized to do marine business in this Commonwealth may take any risk provided it reinsures the same, if necessary, so that it does not retain for itself of the risk an amount exceeding ten per cent. of its capital and surplus wherever they may be, and also provided that it shall place such reinsurance, if possible, at the time and at not over the original rate, with companies authorized to do marine insurance in Massachusetts; any amount in excess of what can be so placed may be reinsured with other companies, if the company or agent procuring said risk shall file an affidavit to that effect with the insurance commissioner, at such time and in such form as may be prescribed by him.

Shall file affidavit of reinsurance in unauthorized company.

SECTION 4. This act shall take effect upon its passage.

Approved June 17, 1898.

[CHAP. 229, ACTS OF 1899.]

An Act relative to Domestic and Foreign Mutual Assessment Life Insurance Corporations.

Be it enacted, etc., as follows:

SECTION 1. Any corporation of this Commonwealth now authorized to transact the business of life insurance, under chapter four hundred and twenty-one of the acts of the year eighteen hundred and ninety and acts in amendment thereof, may, by vote of a majority of its members present and voting at a special meeting called for that purpose, of which meeting a written or printed notice shall have been mailed to each member at least ten days before the date fixed for such meeting, accept the provisions of this act and the provisions of chapter five hundred and twenty-two of the acts of the year eighteen hundred and ninety-four and of acts in amendment thereof relative to life insurance, and shall thereafter, except as herein specifically provided, transact business in accordance with and be governed by the provisions of said acts.

SECTION 2. A copy of the vote of the members designated in section one of this act, sworn to by the president and secretary and a majority of the board of directors as being a true copy, shall be filed with the insurance commissioner, who

shall issue to such corporation a certificate of authority to transact the business of life insurance, in accordance with the provisions of this act and of said chapter five hundred and twenty-two, so far as the same may be applicable.

SECTION 3. Any corporation organized under authority of any other of the United States to insure lives on the assessment plan and now doing business in this Commonwealth, shall upon compliance with this act be relicensed and authorized to transact a general life insurance business in this Commonwealth, upon filing with the insurance department of the state all the papers and documents and making the payments required under the Massachusetts insurance act of eighteen hundred and ninety-four and acts in amendment thereof, so far as the same are or may be applicable, and all business thereafter transacted by such corporation shall be done in accordance with and governed by the provisions of said chapter five hundred and twenty-two, except as provided in this act.

SECTION 4. Every such corporation of this state, or of any other of the United States, upon complying with the requirements of this act, is hereby authorized to carry out in good faith its contracts heretofore made with its members, but all policies or certificates of insurance heretofore issued by such corporations and now remaining in force which contain a provision for a payment other than the premium stipulated therein, and under which the duration of premium payments is co-equal with the duration of the contract, endowment policies and endowment certificates excepted, shall be valued and reserve maintained thereon on the basis of renewable term insurance as fixed by attained age, in accordance with the provisions of said chapter five hundred and twenty-two and of acts in amendment thereof. To the reserve liability determined as above the insurance commissioner shall add the determinate contract reserve under any other policies or certificates heretofore issued and remaining in force, and in the absence of such contract reserve shall value them as contracts providing similar benefits are to be valued under the provisions of said chapter five hundred and twenty-two: *provided*, that under no policy or certificate shall a greater aggregate reserve liability be charged than is required by said chapter.

SECTION 5. After the first day of July in the year eighteen hundred and ninety-nine no policy or certificate of life insurance

under the provisions of chapter four hundred and twenty-one of the acts of the year eighteen hundred and ninety and of acts in amendment thereof shall be issued by any such corporation, unless made subject to and in compliance with the provisions of this act. All policies of life insurance issued by any such corporation after said date, whether or not they contain a provision for a payment other than the premium specified therein, shall be valued, taking the first year as one year term insurance, and the reserve maintained thereon, according to the provisions of said chapter five hundred and twenty-two and of acts in amendment thereof: *provided, however*, that the following words of this section, "taking the first year as one year term insurance," shall not apply to any policies issued on or after the first day of January in the year nineteen hundred and three.

SECTION 6. All parts of chapter four hundred and twenty-one of the acts of the year eighteen hundred and ninety and of acts in amendment thereof which relate to the formation of corporations to transact the business of life insurance, or which provide for the regulation of the business of life insurance by such corporations, and all other provisions of said acts, except such as relate solely to the formation and regulation of corporations organized for the transaction of accident or casualty insurance, and chapter five hundred and fifteen of the acts of the year eighteen hundred and ninety-six, are hereby repealed.

SECTION 7. All acts and parts of acts inconsistent with the provisions of this act are hereby declared not to be applicable to any such corporations organized under chapter four hundred and twenty-one of the acts of the year eighteen hundred and ninety and acts in amendment thereof.

SECTION 8. This act shall take effect on the first day of July in the year eighteen hundred and ninety-nine.

Approved April 1, 1899.

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